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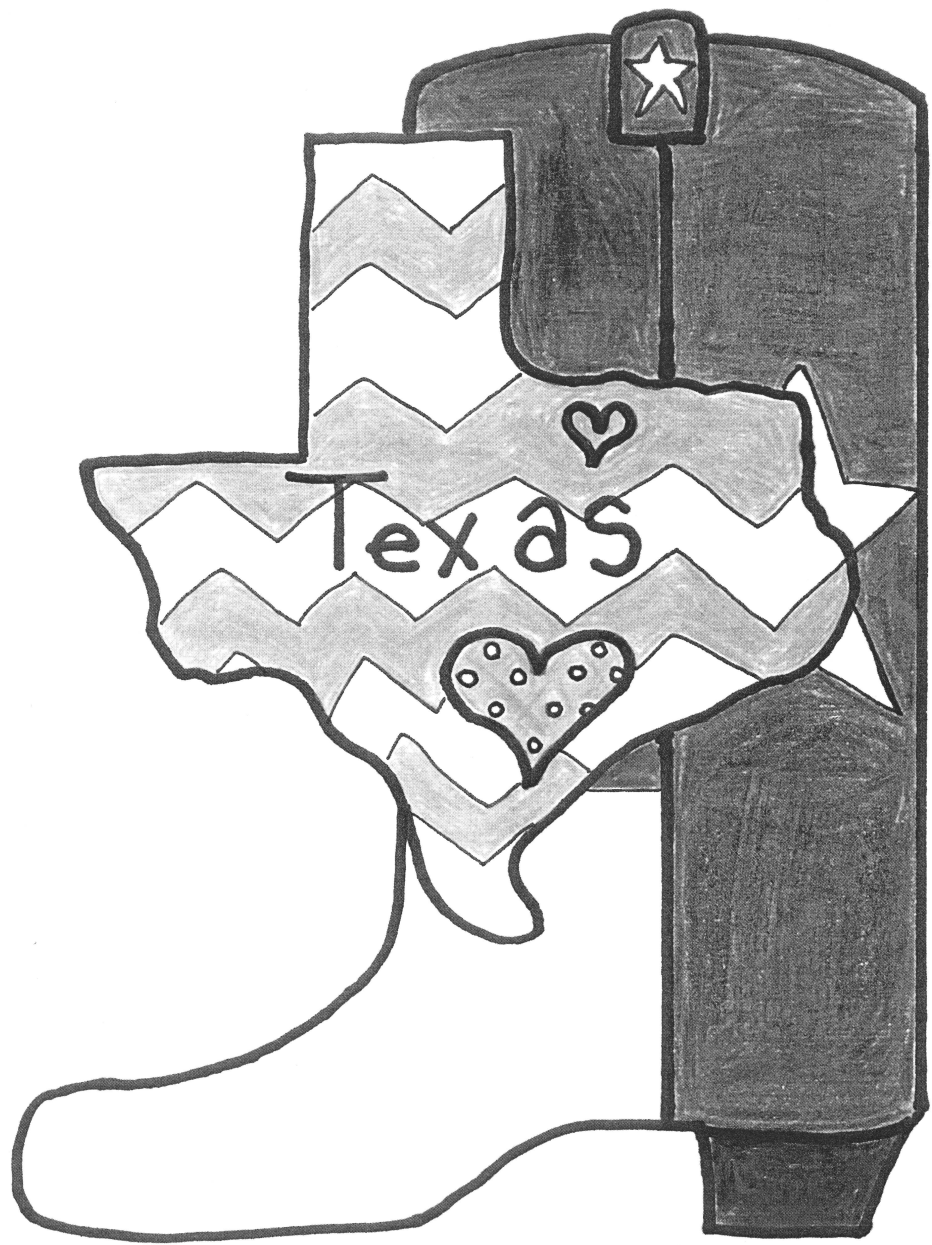
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THE GOVERNOR

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

Appointments

Appointments for June 17, 2021

Appointed to the Public Utility Commission of Texas, for a term to expire September 1, 2021, Lori A. Cobos of Austin, Texas (replacing DeAnn T. Walker of Austin, who resigned).

Appointments for June 22, 2021

Appointed as Temporary Executive Director for the Gulf Coast Protection District, pursuant to SB 1160, 87th Legislature, Regular Session, for a term until the initial board members hire an executive director for the district, Rachael N. "Nicole" Sunstrum of Austin, Texas.

Appointed to the Gulf Coast Protection District Board of Directors, pursuant to SB 1160, 87th Legislature, Regular Session, for a term to expire June 16, 2025, Sally L. Bakko of League City, Texas.

Appointed to the Gulf Coast Protection District Board of Directors, pursuant to SB 1160, 87th Legislature, Regular Session, for a term to expire June 16, 2025, Michel J. Bechtel of Morgan's Point, Texas.

Appointed to the Gulf Coast Protection District Board of Directors, pursuant to SB 1160, 87th Legislature, Regular Session, for a term to expire June 16, 2025, Roger D. Guenther of Galveston, Texas.

Appointed to the Gulf Coast Protection District Board of Directors, pursuant to SB 1160, 87th Legislature, Regular Session, for a term to expire June 16, 2025, Robert D. "Bob" Mitchell of Pearland, Texas.

Appointed to the Gulf Coast Protection District Board of Directors, pursuant to SB 1160, 87th Legislature, Regular Session, for a term to expire June 16, 2025, Lori J. Traweek of Seabrook, Texas.

Appointed to the Gulf Coast Protection District Board of Directors, pursuant to SB 1160, 87th Legislature, Regular Session, for a term to expire June 16, 2025, Michael D. VanDerSnick of Houston, Texas.

Appointments for June 23, 2021

Appointed to the Governor's Committee to Support the Military, for a term to expire at the pleasure of the Governor, Fred E. Milton of New Boston, Texas (replacing Michael B. Cervone of Boerne, who resigned).

Greg Abbott, Governor

TRD-202102450



Appointments

Appointments for June 29, 2021

Appointed as Director of the Office of Community-Based Care Transition, for a term to expire at the pleasure of the Governor, Theresa L. "Trisha" Thomas of Pflugerville, Texas (Ms. Thomas is appointed pursuant to SB 1896, 87th Legislature, Regular Session).

Greg Abbott, Governor

TRD-202102538

Proclamation 41-3845

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Goliad, Gonzales, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kenedy, Kinney, La Salle, Lavaca, Maverick, McMullen, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala counties, and for all state agencies affected by this disaster; and

WHEREAS, communications with county officials have confirmed that the certified conditions continue to exist in many of these counties, and now also pose an ongoing and imminent threat of disaster in additional counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the Proclamation of May 31, 2021, to modify the list of affected counties and therefore declare a state of disaster for Brewster, Brooks, Crockett, Culberson, DeWitt, Dimmit, Edwards, Frio, Goliad, Gonzales, Hudspeth, Jeff Davis, Jim Hogg, Kimble, Kinney, La Salle, Lavaca, Live Oak, Maverick, McMullen, Midland, Pecos, Presidio, Real, Terrell, Uvalde, Val Verde, and Zapata counties, and for all state agencies affected by this disaster.

The Proclamation of May 31, 2021, is further amended to direct the Texas Commission on Jail Standards (TCJS) and the Texas Commission on Law Enforcement (TCOLE) to work with Texas counties and with the Texas Department of Criminal Justice (TDCJ), to provide appropriate guidance, and to request from the Office of the Governor any necessary suspensions of law, in order to ensure that the counties and TDCJ have the flexibility needed to establish adequate alternative detention facilities or otherwise add or expand capacity; to streamline procedures for licensing and transfers; and to address any staffing issues that may arise in expanding capacity.

The Proclamation of May 31, 2021, remains in full force and effect in all respects other than the list of affected counties and the added direction to TCJS and TCOLE relating to TDCJ, as amended herein.

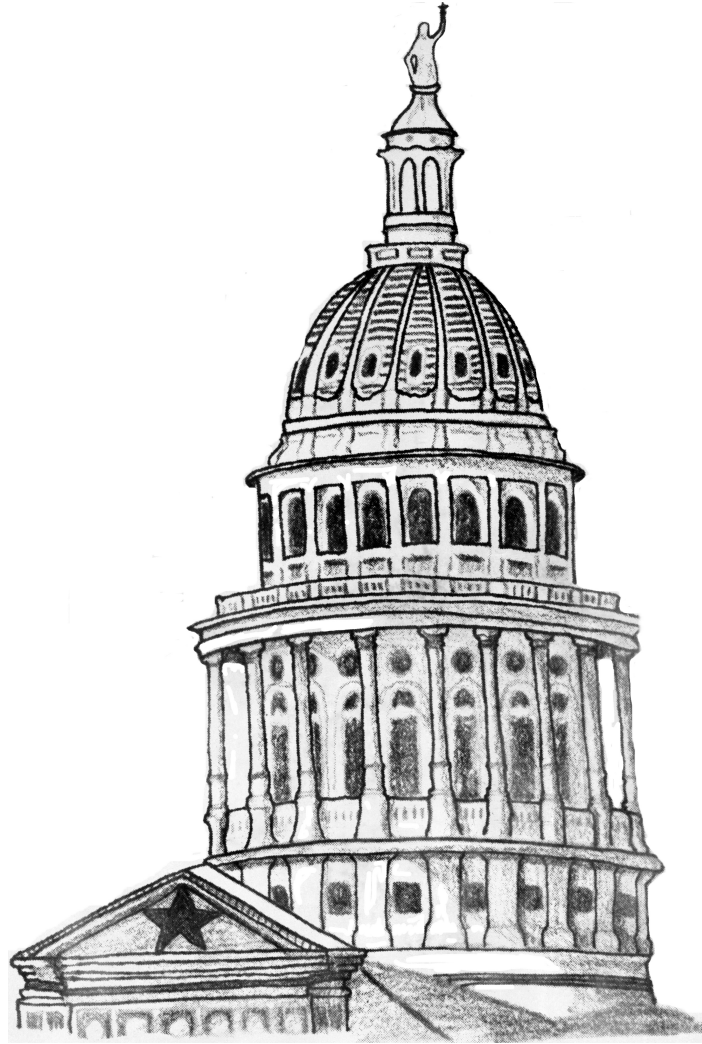
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 25th day of June, 2021.

Greg Abbott, Governor

TRD-202102518





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-0414-KP

Requestor:

The Honorable Charles Perry

Chair, Senate Committee on Water, Agriculture & Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the NCAA's policies on transgender student-athletes violate Title IX

(RQ-0414-KP)

Briefs requested by July 22, 2021

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

TRD-202102523

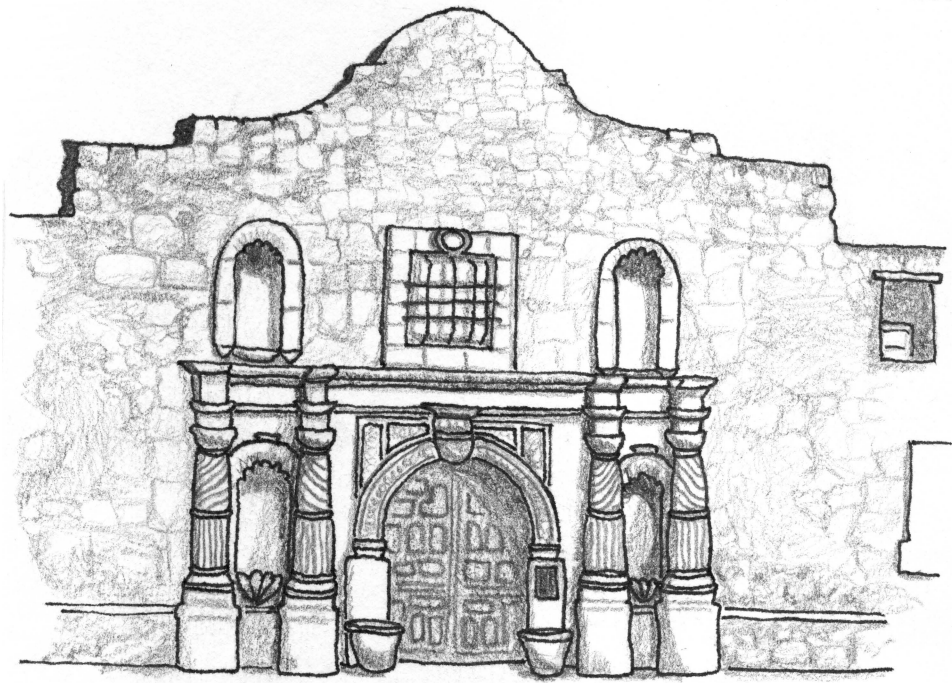
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: June 30, 2021





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER A. COVID-19 EMERGENCY RULE

26 TAC §339.101

The Health and Human Services Commission is renewing the effectiveness of emergency new §339.101 for a 60-day period. The text of the emergency rule was originally published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1574).

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

TRD-202102449

Nycia Deal

Attorney

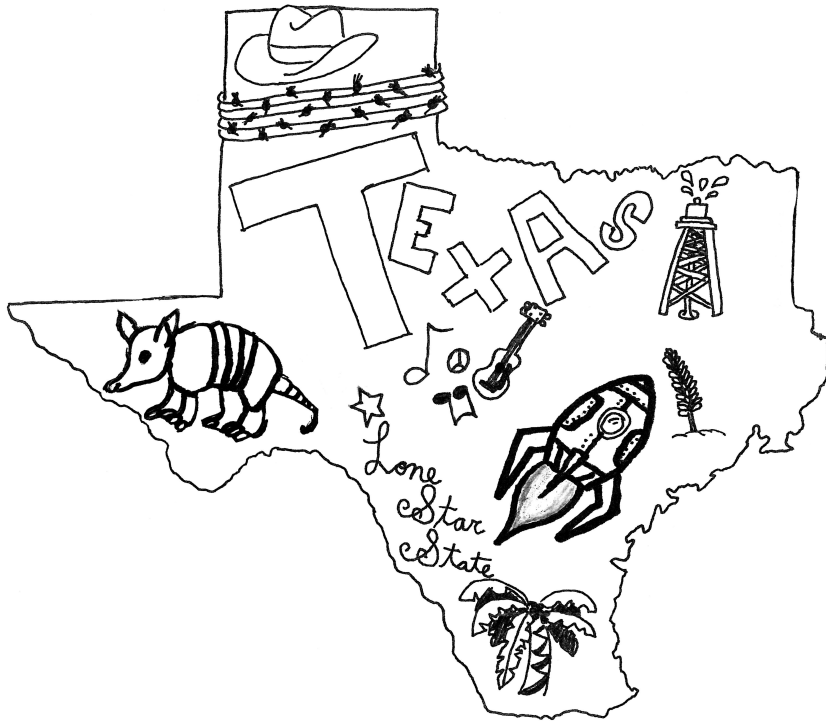
Health and Human Services Commission

Original effective date: February 24, 2021

Expiration date: August 22, 2021

For further information, please call: (512) 438-3135





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 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.1, concerning the general qualifications for dental licensure. To be eligible for licensure, this amendment requires dental applicants to complete a human trafficking prevention course approved by the executive commissioner of the health and human services commission.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§101.1. General Qualifications for Licensure.

(a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

(1) Is at least 21 years of age;

(2) Is professionally fit, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license in any jurisdiction, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;

(3) Has successfully completed a current course in basic life support;

(4) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(5) Has paid all application fees required by the Dental Practice Act and Board rules; ~~and~~

(6) Has submitted fingerprints for the retrieval of criminal history record information; ~~and~~ [.]

(7) Has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission.

(d) In conjunction with the application, the applicant must provide any information requested by the Board pursuant to §254.019(b) of the Dental Practice Act. If an applicant fails to comply with this

subsection, then the applicant is subject to disciplinary action, which includes administrative fines and public disciplinary sanctions.

(e) Applications for licensure must be delivered to the office of the Board.

(f) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant with an explanation of additional documentation or information needed.

(g) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

(h) An applicant for licensure is ineligible if they are in violation of a board order at the time of application.

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 June 24, 2021.

TRD-202102456

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 8, 2021

For further information, please call: (512) 305-8910



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.1, concerning the general qualifications for dental hygiene licensure. To be eligible for licensure, this amendment requires dental hygiene applicants to complete a human trafficking prevention course approved by the executive commissioner of the health and human services commission.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply:

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

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§103.1. *General Qualifications for Licensure.*

(a) Any person desiring to practice dental hygiene in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules.

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

- (1) Is at least 18 years of age;
- (2) Is professionally fit, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;
- (3) Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);
- (4) Has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) with a degree in dentistry or a degree or certificate in dental hygiene, or has graduated from a CODA-accredited school or college of dental hygiene with a degree in dental hygiene;
- (5) Has taken and passed the examination for dental hygienists given by the American Dental Association Joint Commission on National Dental Examinations;
- (6) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds);

(7) Has successfully completed a current course in basic life support;

(8) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year prior to application;

(9) Has paid all application, examination and licensing fees required by the Dental Practice Act and Board rules; ~~and~~

(10) Has submitted fingerprints for the retrieval of criminal history record information; and [-]

(11) Has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission.

(d) Applications for licensure must be delivered to the office of the Board.

(e) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant with an explanation of additional documentation or information needed.

(f) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions.

(g) An applicant for licensure is ineligible if they are in violation of a board order at the time of application.

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 June 24, 2021.

TRD-202102457

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 8, 2021

For further information, please call: (512) 305-8910



CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.7, concerning the minimum standard of care. This amendment removes the requirements pertaining to the minimum standards for safe practice during the COVID-19 pandemic because the Board's emergency rule pertaining to the pandemic has since expired on June 18, 2021.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in

effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§108.7. *Minimum Standard of Care, General.*

Each dentist shall:

(1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);

(3) maintain and review an initial medical history and perform a limited physical evaluation for all dental patients;

(A) The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time

a reasonable and prudent dentist would do so under the same or similar circumstances.

(B) The limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient's medical condition or history indicates such a need.

(4) obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history and limited physical evaluation should be obtained and reviewed at the initial appointment and updated annually;

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

(10) use proper diligence in the dentist's practice;

(11) maintain a centralized inventory of drugs;

(12) report patient death or hospitalization as required by this chapter;

(13) abide by sanitation requirements as required by this chapter;

(14) abide by patient abandonment requirements as required by this chapter;

(15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; and

(16) conduct his/her practice according to the minimum standards for safe practice during the COVID-19 disaster pursuant to the Centers for Disease Control Guidelines and the following guidelines:}]

[(A) Before dental treatment begins:}]

[(i) each dental office shall create COVID-19 procedures and provide dental health care personnel (DHCP) training regarding the COVID-19 office procedures. These procedures must include the pre-schedule screening protocol, in office screening protocol for patients and DHCP, office's transmission-based infection control precautions, as well as protocol to be implemented if DHCP suspects an exposure to COVID-19;}]

[(ii) DHCP experiencing influenza-like illness (ILI) (fever with either cough or sore throat, muscle aches) should not report to work;}]

[(iii) DHCP who are of older age, have a pre-existing, medically compromised condition, pregnant, etc., are perceived to be at a higher risk of contracting COVID-19 from contact with known or suspected COVID-19 patients. Providers who do not fall into these categories (older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy) may be prioritized to provide care;}]

[(iv) all DHCP should self-monitor by remaining alert to any respiratory symptoms (e.g., cough, shortness of breath, sore throat) and check their temperature twice a day, regardless of the presence of other symptoms consistent with a COVID-19 infection;}]

[(v) contact your local health department immediately if you suspect a patient has COVID-19, to prevent transmission to DHCP or other patients;}]

[(vi) remove magazines, reading materials, toys and other objects that may be touched by others and which are not easily disinfected;}]

[(vii) place signage in the dental office for instructing staff and patients on standard recommendations for respiratory hygiene/cough etiquette and social distancing;}]

[(viii) develop and utilize an office protocol to screen all patients by phone before scheduling and during patient confirmation prior to appointment;}]

[(ix) schedule appointments apart enough to minimize possible contact with other patients in the waiting room;}]

[(x) notify patients that they may not bring a companion to their appointment, unless the patient requires assistance (e.g., pediatric patients, special needs patients, elderly patients, etc.). Patient companions should also be screened for signs and symptoms of COVID-19 during patient check-in.}]

[(B) During dental care:}]

[(i) perform in office screening protocol which must include a temperature check, upon patient arrival;}]

[(ii) DHCP shall adhere to standard precautions, which include, but are not limited to: hand hygiene, use of personal protective equipment (PPE), respiratory hygiene/etiquette, sharps safety, safe injection practices, sterile instruments and devices, clean and disinfected environmental surfaces;}]

[(iii) DHCP shall implement Transmission-Based Precautions, including N-95 respirator masks, KN-95 masks, or their substantial equivalent for all DHCP who will be within six (6) feet of any and all procedures likely to involve aerosols;}]

~~[(iv)] DHCP shall adhere to the standard sequence of donning and doffing of PPE;]~~

~~[(C) Clinical technique:]~~

~~[(i)] Patients should perform a pre-procedure rinse, if medically safe;]~~

~~[(ii)] Reduce aerosol production as much as possible, as the transmission of COVID-19 seems to occur via droplets or aerosols, DHCP may prioritize the use of hand instrumentation;]~~

~~[(iii)] DHCP should use dental isolation if an aerosol-producing procedure is being performed to help minimize aerosol or spatter;]~~

~~[(D) After dental care is provided:]~~

~~[(i)] instruct patients to contact the office if they experience COVID-19 symptoms within 14 days after the dental appointment;]~~

~~[(ii)] DHCPs should remove PPE before returning home; and]~~

~~(16) [(17)] hold a Level 1 permit (Minimal Sedation permit) issued by the Board before prescribing and/or administering Halcion (triazolam), and should administer Halcion (triazolam) in an in-office setting.~~

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 June 24, 2021.

TRD-202102458

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: August 8, 2021

For further information, please call: (512) 305-8910



SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §108.55

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.55, concerning advertising for general dentists. This amendment updates subsection (a) to include the three additional specialty areas (oral medicine, dental anesthesiology, and orofacial pain) that were recently added to 22 TAC §108.54(b).

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no

economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§108.55. *Advertising for General Dentists.*

(a) A dentist whose license is not limited to the practice of an ADA recognized specialty identified under §108.54(b)(1) - ~~(12)~~ ~~[(9)]~~ of this subchapter (relating to Advertising of Specialties), may advertise that the dentist performs dental services in those specialty areas of practice, but only if the advertisement also includes a clear disclosure that he/she is a general dentist.

(b) Any advertisement of any specific dental service or services by a general dentist shall include the notation "General Dentist" or "General Dentistry" directly after the name of the dentist. The notation shall be in a font size no smaller than the largest font size used to identify the specific dental services being advertised. For example, a general dentist who advertises "ORTHODONTICS" and "DENTURES" and/or "IMPLANTS" shall include a disclosure of "GENERAL DENTIST" or "GENERAL DENTISTRY" in a font size no smaller than the largest font size used for terms 'orthodontics,' 'dentures' and/or 'implants.' Any form of broadcast advertising by a general dentist (radio, television, promotional DVDs, etc) shall include either "General Dentist" or "General Dentistry" in a clearly audible manner.

(c) A general dentist is not prohibited from listing services provided, so long as the listing does not imply specialization. A listing of services provided shall be separate and clearly distinguishable from the dentist's designation as a general dentist.

(d) The provisions of this rule shall not be required for professional business cards or professional letterhead.

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 June 24, 2021.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 305-8910



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.6

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.6, concerning the general qualifications for dental assistant registration or certification. To be eligible for registration or certification, this amendment requires dental assistant applicants to complete a human trafficking prevention course approved by the executive commissioner of the health and human services commission.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

§114.6. General Qualifications for Registration or Certification.

(a) Any person who desires to provide dental assistant services requiring registration or certification must obtain the proper registration or certification issued by the Board before providing the services, except as provided in Texas Occupations Code §265.005(l) and §114.11 of this chapter.

(b) Any applicant for registration or certification must meet the requirements of this chapter.

(c) To be eligible for registration or certification, an applicant must provide with an application form approved by the Board satisfactory proof to the Board that the applicant:

(1) has fulfilled all requirements for registration or certification outlined in this chapter;

(2) has met the requirements of §101.8 of this title;

(3) has not had any disciplinary action taken in this state or any other jurisdiction;

(4) has successfully completed a current course in basic life support;

(5) has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application; ~~and~~

(6) has paid all application, examination and fees required by law and Board rules and regulations; and [-]

(7) has completed a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission.

(d) Applications for dental assistant registration and certification must be delivered to the office of the State Board of Dental Examiners.

(e) An application for dental assistant registration or certification is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application will be returned to the applicant with an explanation of additional documentation or information needed.

(f) The Board may refuse to issue registration or certificate or may issue a conditional registration or certificate to any individual who does not meet the requirements of subsections (c)(2) or (c)(3) of this section, or who:

(1) presents to the Board fraudulent or false evidence of the person's qualification for registration or certification;

- (2) is guilty of any illegality, fraud, or deception during the process to secure a registration or certification;
- (3) is habitually intoxicated or is addicted to drugs;
- (4) commits a dishonest or illegal practice in or connected to dentistry;
- (5) is convicted of a felony under federal law or law of this state; or
- (6) is found to have violated a law of this state relating to the practice of dentistry within the 12 months preceding the date the person filed an application for a registration or certification.

(g) If the Board chooses to issue a conditional registration or certificate, the individual may be required to enter into an agreed settlement order with the Board at the time the registration or certificate is issued. In determining whether to issue a conditional registration or certificate, the Board shall consider the following factors, as applicable:

- (1) the nature and seriousness of the crime or violation;
- (2) the relationship of the crime or violation to the purposes for requiring a registration/certification to engage in the occupation;
- (3) the extent to which a registration/certification might offer an opportunity to engage in further criminal activity or violations of the same type as that in which the person previously had been involved;
- (4) the relationship of the crime or violation to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the registered occupation;
- (5) the extent and nature of the person's past criminal activity or disciplinary history;
- (6) the age of the person when the crime or violation was committed;
- (7) the amount of time that has elapsed since the person's last criminal activity or violation;
- (8) the conduct and work activity of the person before and after the criminal activity or violation;
- (9) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (10) other evidence of the person's fitness, including letters of recommendation from:

- (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
- (B) the sheriff or chief of police in the community where the person resides; and
- (C) any other person in contact with the convicted person.

(11) The applicant shall, to the extent possible, obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order or in all administrative cases in which the applicant has been the subject of a final disciplinary action.

(12) The order may include limitations including, but not limited to, practice limitations, stipulations, compliance with court ordered conditions, notification to employer or any other requirements the Board recommends to ensure public safety.

(13) In the event an applicant is uncertain whether he or she is qualified to obtain a dental assistant registration or certification due to criminal conduct, the applicant may request a Criminal History Evaluation Letter in accordance with §114.9 of this chapter, prior to application.

(14) Should the individual violate the terms of his or her conditional registration or certificate, the Board may take additional disciplinary action against the individual.

(h) An applicant whose application is denied by the Board may appeal the decision to the State Office of Administrative Hearings.

(i) An individual whose application for dental assistant registration/certification is denied is not eligible to file another application for registration/certification until the expiration of one year from the date of denial or the date of the Board's order denying the application for registration/certification, whichever date is later.

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 June 24, 2021.
 TRD-202102460
 Lauren Studdard
 General Counsel
 State Board of Dental Examiners
 Earliest possible date of adoption: August 8, 2021
 For further information, please call: (512) 305-8910

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.41, §851.80

The Texas Board of Professional Geoscientists (TBPG) proposes amendments concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §851.41 and §851.80, regarding the addition of a Texas Fundamentals of Geophysics exam for the Geoscientist-in-Training (GIT) certification in the discipline of Geophysics.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

TBPG proposes amendments that will allow applicants for the GIT certification in the discipline of Geophysics to utilize the Texas Fundamentals of Geophysics examination as the qualifying examination for obtaining the certificate.

The proposed amendment to 22 TAC §851.41 will benefit applicants who apply for the GIT certification in the discipline of geophysics, because the current examination tests knowledge

of both fundamentals and professional practice of geophysics. The new fundamentals-only examination is better suited to applicants at this early stage in their careers because it eliminates the need for these applicants to answer the professional practice questions before they have had the opportunity to gain the necessary knowledge and experience. The proposed amendment in 22 TAC §851.80 adds an examination fee for applicants requesting to sit for the new Texas Fundamentals of Geophysics Examination. The proposed cost to take the new Texas Fundamentals of Geophysics Examination is \$75. This fee represents a reduction in cost to applicants for GIT certification because the fee for the currently required examination for the geophysics GIT certification is \$175. Therefore, in offering a new fundamentals examination, there is a decrease in the cost to applicants for requesting GIT certification in geophysics. The certification for GIT is also optional, so the cost is not mandatory for applicants. The proposed amendments also revise the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name.

TBPG proposes an amendment to 22 TAC §851.41 to add language in subsection (a)(2)(c), to show that the "Texas Fundamentals of Geophysics Examination (TFGE)" is the qualifying examination for the GIT certification in geophysics. The proposed amendment also revises the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name.

TBPG proposes an amendment to 22 TAC §851.80 to add a fee for the Texas Fundamentals of Geophysics examination of \$75, which is a decrease of the examination fee for this certification from \$175 to \$75 (a decrease of \$100). The proposed amendment also removes the name "National Association of State Board of Geology (ASBOG®)" and replaces it with the shortened name "ASBOG®" in subsection (d)(1) when referring to the provider of the Geology Fundamentals and Practice exams. It also renumbers the section for consistency.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the section is in effect there is no cost to the state and local governments as a result of enforcing or administering the section as proposed. There is no anticipated negative impact on state or local government. There are no estimated reductions in cost to the state and to local governments as a result of enforcing or administering the proposed sections. There is no estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering these sections. These proposals have no foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent regarding the examination requirements for a GIT certification in the discipline of geophysics, and that the qualifying examination for the GIT in geophysics is an appropriate measure of an applicant's knowledge. There is also the benefit of a reduced cost to those applicants who apply for certification as a GIT in geophysics in Texas. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (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; however, although this is a new fee for a newly offered exam for an optional certificate, the Board does not expect this new fee to result in the absolute amount of fees the Board receives to go up or down in any meaningful way;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand, limit, or repeal an existing regulation;
- (7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Mr. Truan 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, do not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpge.texas.gov. Please indicate "Comments on Proposed Rules" in the subject

line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; Occupations Code §1002.152, which provides that Board shall set reasonable and necessary fees to be charged applicants for examination; Occupations Code §1002.352, which allows the Board to establish criteria by which an individual may register with the board as a GIT.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.152, and 1002.352.

§851.41. *Geoscientist-in-Training Certification Requirements and Application Procedure.*

(a) To qualify for certification, an applicant must meet the following requirements:

(1) Educational requirements for licensure as a P.G. as established in §851.25(a) of this chapter.

(2) Passed one of the following examinations:

(A) Geology discipline: ASBOG® [National Association of State Boards of Geology (ASBOG®)] Fundamentals of Geology Examination;

(B) Soil Science discipline: Council of Soil Science Examiners (CSSE) Soil Science Fundamentals Examination; or

(C) Geophysics discipline: The Texas Fundamentals of Geophysics Examination (TFGE).

(3) Application fee published in §851.80 of this chapter.

(b) Application Procedure:

(1) Submit a GIT Certification Application (Form H);

(2) Submit an official academic transcript in accordance with §851.25(b) of this chapter; and

(3) Pay the application fee.

(c) An applicant who has been granted an exemption from an examination described by (a)(2) of this section is not eligible to become a GIT.

§851.80. *Fees.*

(a) All fees are non-refundable.

(b) P.G. application and license fee--\$255.

(c) Examination processing fee--\$25.

(d) Applicable examination fees:

(1) Geology--Fundamentals and Practice as determined by ASBOG® [the National Association of State Boards of Geology (ASBOG®)].

(2) Geophysics--Texas Fundamentals of Geophysics Examination--\$75.

(3) Geophysics--Texas Geophysics Examination--\$175.

(4) [(3)] Soil Science--Fundamentals and Practice as determined by the Council of Soil Science Examiners (CSSE).

(e) Issuance of a revised or duplicate license wall certificate--\$25.

(f) P.G. renewal fee--\$223 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any individual sixty-five (65) years of age or older, permanently disabled, or under a significant medical hardship, as determined by the Executive Director as of the renewal date shall be half the current renewal fee.

(g) Late renewal penalty--\$50.

(h) Fee for affidavit of licensure--\$15.

(i) Verification of licensure--\$15.

(j) Temporary license--\$200.

(k) Firm registration application--\$300.

(l) Firm registration renewal--\$300.

(m) Insufficient funds fee--\$25.

(n) Application for Geoscientist-in-Training certification--\$25.

(o) Annual renewal of Geoscientist-in-Training certification--\$25.

(p) Texas Geophysics Examination Proctored Review--\$50.

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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Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §133.101, concerning Inspection and Investigation Procedures; and §133.102, concerning Complaint Against Department of State Health Services Surveyor; new §§133.101, concerning Integrity of Inspections and Investigations; 133.102, concerning Inspections; 133.103, concerning Complaint Investigations; 133.104, concerning Notice; 133.105, concerning Professional Conduct; and 133.106, concerning Complaint Against an HHSC Representative; and an amendment to §133.121, concerning Enforcement Action.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspections and complaint investigations procedures for general and special hospitals. These procedures require updating in order to hold facilities accountable during the inspection and investigation processes and ensure that necessary documentation is pro-

vided in a timely manner to HHSC surveyors. The proposal revises enforcement procedures to ensure accuracy and conform to statute. In addition, these updates ensure consistent practices across all Health Care Regulation (HCR) rulesets.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §133.101 and §133.102 deletes this content as no longer necessary. These procedures are updated and new content provided in proposed new §§133.101 - 133.106.

Proposed new §133.101, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

Proposed new §133.102, Inspections, makes necessary updates to guidelines for inspections of hospitals and special hospitals.

Proposed new §133.103, Complaint Investigations, makes necessary updates to guidelines for investigations of hospitals and special hospitals following a complaint.

Proposed new §133.104, Notice, informs providers of the required timeframes regarding responding to deficiencies, plans of correction, and the provision of additional evidence.

Proposed new §133.105, Professional Conduct, notifies providers that enforcement actions are reported to appropriate licensing authorities.

Proposed new §133.106, Complaint Against an HHSC Representative, informs providers about registering a complaint against an HHSC inspector or investigator.

The proposed amendment to §133.121, Enforcement Action, creates consistency between this ruleset and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of health care facilities. Patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

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 the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R012" in the subject line.

SUBCHAPTER F. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §133.101, §133.102

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.101. Inspection and Investigation Procedures.

§133.102. Complaint Against a Department of State Health Services Surveyor.

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 June 28, 2021.

TRD-202102483

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 8, 2021

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



25 TAC §§133.101 - 133.106

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.101. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of HHSC's inspection and investigation process, a facility:

(1) shall not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients; or

(2) shall not record, listen to, or eavesdrop on any internal discussion by or among HHSC staff unless it first informs HHSC staff that it will do so and obtains HHSC's written approval before beginning to record, listen to, or eavesdrop on the discussion.

(b) This section does not prohibit an individual from recording an HHSC interview with the individual.

§133.102. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct a routine inspection of each hospital prior to the issuance or renewal of a hospital license.

(1) A hospital is not subject to routine inspections subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC), §§1395 *et seq.*; or

(B) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(2) HHSC may conduct a routine inspection of a hospital exempt from an annual licensing inspection under paragraph (1) of this subsection before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and HHSC determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.

(b) HHSC may conduct an unannounced, on-site inspection of a hospital at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a hospital's plan of correction;

(3) an order or special order of the commissioner or the commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the hospital.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its hospitals by HHSC.

(d) HHSC inspections to evaluate a hospital's compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed hospital is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency's entry.

(e) A hospital shall cooperate with any HHSC inspection and shall permit HHSC to examine the hospital's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the hospital.

(f) A hospital shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC within 48 hours after HHSC makes the request.

(g) A hospital shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the hospital, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) HHSC shall maintain the confidentiality of hospital records as applicable under state or federal law. All information and materials obtained or compiled by HHSC in connection with an inspection are confidential and not subject to disclosure under Section 552.001 *et seq.*, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other

than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with HHSC in the enforcement action against the hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(i) Upon entry, HHSC holds an entrance conference with the hospital's designated representative to explain the nature, scope, and estimated duration of the inspection.

(j) During the inspection, the HHSC representative gives the hospital an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(k) When an inspection is complete, HHSC holds an exit conference with the hospital representative to inform the hospital representative of any preliminary findings of the inspection. The hospital may provide any final documentation regarding compliance during the exit conference.

(l) Reinspection.

(1) Reinspections may be conducted by HHSC if a hospital applies for the reissuance of its license after the suspension or revocation of the hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of the Act, this chapter, a special license condition, or an order of the commissioner.

(2) A reinspection may be conducted to ascertain compliance with either health or construction requirements or both.

§133.103. Complaint Investigations.

(a) A hospital shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the hospital.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The hospital shall prominently and conspicuously post this information in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC's jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a hospital's compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations may be coordinated with the federal Centers for Medicare and Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act, (42 USC, §§1395 *et seq.*), so as to avoid duplicate investigations.

(e) HHSC may conduct an unannounced, on-site investigation of a hospital at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

- (1) a hospital's compliance with any applicable statute or rule;
- (2) a hospital's plan of correction;
- (3) a hospital's compliance with an order of the commissioner or the commissioner's designee;
- (4) a hospital's compliance with a court order granting injunctive relief; or
- (5) for other purposes relating to regulation of the hospital.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A hospital shall cooperate with any HHSC investigation and shall permit HHSC to examine the hospital's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the hospital.

(h) A hospital shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A hospital shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the hospital, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) HHSC shall maintain the confidentiality of hospital records as applicable under state or federal law. All information and materials obtained or compiled by HHSC in connection with an investigation are confidential and not subject to disclosure under Section 552.001 *et seq.*, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with HHSC in the enforcement action against the hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(k) Upon entry, HHSC holds an entrance conference with the hospital's designated representative to explain the nature, scope, and estimated duration of the investigation.

(l) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§133.104. Notice.

(a) A hospital is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the hospital with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the hospital's receipt of the SOD, the hospital shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the hospital in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the hospital in writing no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The hospital shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the hospital's compliance with this subsection or HHSC's acceptance of a hospital's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§133.105. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§133.106. Complaint Against an HHSC Representative.

(a) A hospital may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter.

(b) A complaint against an HHSC representative shall be registered with the HHSC Health Facility Compliance Manager.

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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Barbara L. Klein

General Counsel

Department of State Health Services

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



SUBCHAPTER G. ENFORCEMENT

25 TAC §133.121

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.121. Enforcement Action.

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them. [Enforcement action may be taken for the following reasons:]

(1) Denial, suspension or revocation of a license or imposition of an administrative penalty. HHSC [The department] has jurisdiction to enforce violations of the Act or the rules adopted under this chapter. HHSC [The department] may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons [if the licensee or applicant]:

(A) failure [fails] to comply with any provision of Health and Safety Code (HSC), Chapters 241 or 311;

(B) failure [fails] to comply with any provision of this chapter or any other applicable laws [(25 Texas Administrative Code, Chapter 133)];

(C) the hospital, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient [fails to comply with a special license condition];

(D) the hospital, or any of its employees, materially alters any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide an adequate licensure application or renewal information;

(G) [~~(D)~~] failure [fails] to comply with an order of the commissioner [department] or another enforcement procedure under HSC, Chapters 241 or 311;

(H) [~~(E)~~] [has] a history of failure to comply with the applicable rules [adopted under this chapter] relating to patient environment, health, safety, and rights;

(I) [~~(F)~~] the hospital, or any of its employees, has aided, committed, abetted or permitted the commission of an illegal act;

(J) [~~(G)~~] the hospital, or any of its employees, commits [has committed] fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC [the department] or required to be maintained by the hospital [facility] pursuant to HSC Chapter 241 and the provisions of this chapter;

(K) [~~(H)~~] failure [fails] to timely pay an assessed administrative penalty as required by HHSC [penalties in accordance with HSC, Chapter 241];

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) [~~(I)~~] failure [fails] to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction [the department]; [or]

(N) ~~[(F)] failure [fails]~~ to comply with applicable requirements within a designated probation period; ~~or[-]~~

(O) if the hospital is participating under Title XVIII, the Centers for Medicare and Medicaid Services terminates the hospital's Medicare provider agreement.

(2) Denial of a license. HHSC [The department] has jurisdiction to enforce violations of the HSC, Chapters 241 and 311 and this chapter. HHSC [The department] may deny a license if the applicant:

(A) fails to provide timely and sufficient information required by HHSC [the department] that is directly related to the application;

(B) has had the following actions taken against the applicant within the two-year period preceding the application:

(i) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(ii) federal Medicare or state Medicaid sanctions or penalties;

(iii) unsatisfied federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved federal Medicare or state Medicaid [or federal Medicare] audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(3) Emergency suspension. Following notice and opportunity for hearing, the executive commissioner of HHSC [the department of state health services (commissioner)] or a person designated by the executive commissioner may issue an emergency order in relation to the operation of a hospital licensed under this chapter if the executive commissioner or the commissioner's designee determines that the hospital is violating this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(A) HHSC [The department] shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(B) The hearing shall be held in accordance with HHSC's [the department's] informal hearing rules.

(C) The order shall be effective on delivery to the hospital or at a later date specified in the order.

(4) Probation. In lieu of denying, suspending, or revoking the license, HHSC [the department] may place [schedule] the hospital [facility] on [for a] probation for a period of not less than 30 days, if the hospital [facility] is found in repeated noncompliance with these rules or HSC, Chapter 241, and the hospital's [facility's] noncompliance does not endanger the health and safety of the public.

(5) Administrative penalty. HHSC [The department] has jurisdiction to impose an administrative penalty against a hospital [facility] licensed or regulated under this chapter for violations of the HSC, Chapters 241 and 311 and this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of the HSC, §241.059 and §241.060.

(6) Licensure of persons or entities with criminal backgrounds. HHSC [The department] may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a hospital [facility]. HHSC [The department] shall apply the requirements of the Occupations Code, Chapter 53.

(A) HHSC [The department] is entitled under Government Code Chapter 411 to obtain criminal history information maintained by the Texas Department of Public Safety [~~Government Code, §411.122~~], the Federal Bureau of Investigation, [~~Government Code, §411.087~~] or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC [the department] shall consider the provisions of Occupations Code Chapter 53 [~~§53.022 and §53.023~~].

(C) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a hospital [facility]:

(i) a misdemeanor violation of HSC, Chapter 241;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a misdemeanor or felony relating to deceptive business practices;

(iv) a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under the Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency or a health care professional; or

(vii) a misdemeanor or felony under the TPC:

(I) Title 4--offenses of attempting or conspiring to commit any of the offenses in this clause;

(II) Title 5--offenses against the person;

(III) Title 7--offenses against property;

(IV) Title 8--offenses against public administration;

(V) Title 9--offenses against public order and decency;

(VI) Title 10--offenses against public health, safety and morals; or

(VII) Title 11--offenses involving organized crime.

(7) ~~[(viii)]~~ Offenses listed in paragraph (6)(C) of this subsection [subparagraph (C) of this paragraph] are not exclusive in that HHSC [the department] may consider similar criminal convic-

tions from other state, federal, foreign, or military jurisdictions that demonstrate the inability of the person or entity to own or operate a hospital [facility].

(8) [(ix)] A license shall be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(9) [(7)] Notice. If HHSC [the department] proposes to deny, suspend or revoke a license, or impose an administrative penalty, HHSC [the department] shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC [the department] or HHSC [the department] may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before imposition of the action.

(10) [(8)] Acceptance. Within 20 calendar days after receipt of the notice, the applicant or licensee may notify HHSC [the department], in writing, of acceptance of HHSC's [the department's] determination or request a hearing.

(11) [(9)] Hearing request.

(A) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC [the department] within 20 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the third [30th] day after the date the notice is mailed by HHSC [the department] to the last address known of the applicant or licensee.

(B) A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Purpose and Scope, Subpoena, Default, and Action After the Hearing, respectively).

(12) [(10)] No response to notice. If the applicant or licensee fails to timely respond to the notice or does not request a hearing in writing within 30 days after the date of the notice, the case shall be set for a hearing.

(13) [(11)] Notification of HHSC's [department's] final decision. HHSC [The department] shall send the licensee or applicant a copy of HHSC's [the department's] decision for denial, suspension or revocation of license or imposition of an administrative penalty by certified [registered] mail, which shall include the findings of fact and conclusions of law on which HHSC [the department] based its decision.

(14) [(12)] Decision to suspend or revoke. When HHSC's [the department's] decision to suspend or revoke a license is final, the licensee must immediately cease operation, unless a stay of such action is issued by the district court.

(15) [(13)] Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC [the department] within 30 days of HHSC's notification [upon the effective date of the department's determination].

(16) [(14)] Reapplication following denial or revocation.

(A) After HHSC's [the department's] decision to deny or revoke, or the voluntary surrender of a license by a hospital [facility] while enforcement action is pending, a facility may petition HHSC [the department], in writing, for a license.

(B) HHSC [The department] may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC [The department] may deny reapplication for licensure if HHSC [the department] determines that:

(i) the reasons for the original action continues;

(ii) the petitioner has failed to offer sufficient proof that conditions have changed; or

(iii) the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC [the department] allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §133.22 of this chapter [title] (relating to Application and Issuance of Initial License).

(17) [(15)] Expiration of a license during suspension. A hospital [facility] whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(18) [(16)] Surrender of a license. In the event that enforcement, as defined in this section [subsection], is pending or reasonably imminent, the surrender of a hospital [facility] license shall not deprive HHSC [the department] of jurisdiction in regard to enforcement against the hospital [facility].

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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Barbara L. Klein

General Counsel

Department of State Health Services

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



CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§135.21, concerning Inspections; 135.24, concerning Enforcement; and 135.25, concerning Complaints; amendment of §135.22, concerning Renewal of License; and new §§135.61, concerning Integrity of Inspections and Investigations; 135.62, concerning Inspections; 135.63, concerning Complaint Investigations; 135.64, concerning Notice; 135.65, concerning Professional Conduct; and 135.66, concerning Enforcement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspections and complaint investigations procedures for ambulatory surgical centers (ASC). These procedures require updating in order to hold facilities accountable during the inspection and investigation processes and ensure that necessary documentation is provided in a timely manner to HHSC surveyors. The proposal revises enforcement procedures to ensure accuracy and con-

form to statute. In addition, these updates ensure consistent practices across all Health Care Regulation (HCR) rulesets.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§135.21, 135.24, and 135.25 deletes this content as no longer necessary. These procedures are being updated and new content will be provided in proposed new §§135.61 - 135.66 in new Subchapter D, Inspection, Investigation, and Enforcement Procedures.

The proposed amendment to §135.22, Renewal of License, makes necessary updates to reflect the transition of responsibility from the Texas Department of State Health Services to HHSC. The proposed amendment to §135.22 also specifies the time frame for an ASC to return the license to HHSC when the ASC cannot provide sufficient evidence that the submission of a renewal application and fee was submitted within 30 days prior to the expiration date of the license.

Proposed new §135.61, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

Proposed new §135.62, Inspections, makes necessary updates to guidelines for inspections of ASCs.

Proposed new §135.63, Complaint Investigations, makes necessary updates to guidelines for investigations of ASCs following a complaint.

Proposed new §135.64, Notice, informs providers of the required timeframes regarding responding to deficiencies, Plans of Correction (POC), and the provision of additional evidence.

Proposed new §135.65, Professional Conduct, notifies providers that enforcement actions are reported to appropriate licensing authorities.

Proposed new §135.66, Enforcement, creates consistency between this ruleset and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of health care facilities. Patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

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 the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R012" in the subject line.

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.21, 135.24, 135.25

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.21. *Inspections.*

§135.24. *Enforcement.*

§135.25. *Complaints.*

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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25 TAC §135.22

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.22. *Renewal of License.*

(a) HHSC [The department] shall send written notice of expiration of a license to an ambulatory surgical center (ASC) at least 60 days before the expiration date. If the applicant has not received notice, it is the duty of the ASC to notify HHSC [the department] and request a renewal application.

(b) HHSC [The department] shall issue a renewal license to an ASC that meets the minimum standards for a license set forth in these sections.

(1) The ASC shall submit the following to HHSC [the department] no later than 30 days prior to the expiration date of the license:

(A) a completed renewal application form;

(B) a nonrefundable license fee; and

(C) if the ASC is accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities, documented evidence of current accreditation status.

(2) Renewal licenses shall be valid for two years.

(c) If the applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, HHSC [the department] shall notify the applicant that the ASC shall cease providing ambulatory surgical services. If the ASC can provide HHSC [the department] with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, the cease to perform shall be dismissed. If the ASC cannot provide sufficient evidence, the ASC shall [immediately] thereafter return the license to HHSC within 30 days of HHSC's notification by certified mail. If the applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant shall reapply for a license under §135.20 of this title (relating to Initial Application and Issuance of License).

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

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SUBCHAPTER D. INSPECTION, INVESTIGATION, AND ENFORCEMENT PROCEDURES

25 TAC §§135.61 - 135.66

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.61. *Integrity of Inspections and Investigations.*

(a) In order to preserve the integrity of HHSC's inspection and investigation process, a facility:

(1) shall not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients; or

(2) shall not record, listen to, or eavesdrop on any internal discussion by or among HHSC staff unless it first informs HHSC staff that it will do so and obtains HHSC's written approval before beginning to record, listen to, or eavesdrop on the discussion.

(b) This section does not prohibit an individual from recording an HHSC interview with the individual.

§135.62. *Inspections.*

(a) The Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of an ambulatory surgical center (ASC) at any reasonable time, including when treatment

services are provided, to inspect, investigate, or evaluate compliance with:

- (1) any applicable statute or rule;
- (2) an ASC's plan of correction;
- (3) an order of the commissioner or the commissioner's designee;
- (4) a court order granting injunctive relief; or
- (5) for other purposes relating to regulation of the ASC.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its ASCs by HHSC.

(c) HHSC inspections to evaluate an ASC's compliance may include:

- (1) Initial, change of ownership, or relocation inspections for the issuance of a new license;
- (2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;
- (3) Routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;
- (4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;
- (5) Inspections to determine if an unlicensed ASC is offering or providing, or purporting to offer or provide, treatment; and
- (6) Entry in conjunction with any other federal, state, or local agency's entry.

(d) An ASC shall cooperate with any HHSC inspection and shall permit HHSC to examine the ASC's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the ASC.

(e) An ASC shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC within 48 hours after HHSC makes the request.

(f) An ASC shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the ASC, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the ASC's designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the ASC an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the ASC representative to inform the facility representative of any preliminary findings of the inspection. The ASC may provide any final documentation regarding compliance during the exit conference.

§135.63. Complaint Investigations.

(a) An ambulatory surgical center (ASC) shall provide each client and applicable consentor at the time of admission with a written statement identifying the Texas Health and Human Services Commis-

sion (HHSC) as the agency responsible for investigating complaints against the ASC.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The ASC shall prominently and conspicuously post this information in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC's jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate an ASC's compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of an ASC at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

- (1) an ASC's compliance with any applicable statute or rule;
- (2) an ASC's plan of correction;
- (3) an ASC's compliance with an order of the commissioner or the commissioner's designee;
- (4) an ASC's compliance with a court order granting injunctive relief; or
- (5) for other purposes relating to regulation of the ASC.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its ASCs by HHSC.

(g) An ASC shall cooperate with any HHSC investigation and shall permit HHSC to examine the ASC's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the ASC.

(h) An ASC shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) An ASC shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the ASC, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the ASC's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§135.64. Notice.

(a) An ambulatory surgical center (ASC) is deemed to have received any Texas Health and Human Services (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the ASC with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the facility's receipt of the SOD, the ASC shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the ASC in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the ASC in writing no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The ASC shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the ASC's compliance with this subsection or HHSC's acceptance of an ASC's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§135.65. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§135.66. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them.

(b) Reasons for enforcement action.

(1) Denial, suspension or revocation of a license. In accordance with Health and Safety Code (HSC) §243.011, HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(A) failure to comply with any provision of HSC Chapter 243;

(B) failure to comply with any provision of this chapter or any other applicable laws;

(C) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the ASC, or any of its employees, materially alters any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide an adequate licensure application or renewal information;

(G) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapter 243;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the ASC, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(J) the ASC, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 577 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

(N) failure to comply with applicable requirements within a designated probation period; or

(O) if the ASC is participating under Title XVIII, and the Centers for Medicare and Medicare Services terminates the ASC's Medicare provider agreement.

(2) HHSC may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of the ownership or operation of an ambulatory surgical center.

(A) In determining whether a criminal conviction directly relates, HHSC shall consider the provisions of Occupations Code, Chapter 53.

(B) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate an ambulatory surgical center:

(i) a misdemeanor violation of the statute;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a conviction relating to deceptive business practices;

(iv) a misdemeanor of practicing any health-related profession without a required license;

(v) a conviction under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) an offense under the Penal Code, Title 5, involving a patient or a client of any health care facility, a home and community support services agency, or a health care professional;

(vii) a misdemeanor or felony offense under various titles of the Penal Code, as follows:

(I) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection;

(II) Title 5 concerning offenses against the person;

(III) Title 7 concerning offenses against property;

(IV) Title 9 concerning offenses against public order and decency; or

(V) Title 10 concerning offenses against public health, safety, and morals; and

(viii) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate an ambulatory surgical center.

(C) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

(3) If HHSC proposes to deny, suspend, or revoke a license, HHSC shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 20 days after the date the applicant receives notice. The request shall be in writing and submitted to HHSC as instructed in the notice of violation letter. A hearing shall be conducted pursuant to the Government Code, Chapter 2001, Administrative Procedure Act, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures). If a hearing is not requested in writing within 20 calendar days after receiving notice of the proposed action, the applicant is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(4) If HHSC finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, HHSC may petition the district court for a temporary restraining order to restrain continuing violations.

(5) The provisions of Occupations Code, Chapter 53, Consequences of Criminal Conviction, apply to an ASC.

(6) If a person violates the licensing requirements or the standards prescribed by the Act, HHSC may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

(c) Emergency suspension of a license. HHSC may issue an emergency order to suspend a license issued under this chapter, if HHSC has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(1) An emergency suspension is effective immediately without a hearing on notice to the license holder.

(2) On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of the office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by HHSC's rules for a contested case hearing and Government Code, Chapter 2001.

(d) Probation. In lieu of denying, suspending or revoking the license under subsection (a) of this section, HHSC may place the ASC on probation for a period of not less than 30 days, if the ASC is found in repeated non-compliance and the ASC's noncompliance does not endanger the health and safety of the public.

(1) HHSC shall provide notice of the probation to the ASC not later than the 10th day before the date the probation begins. The

notice shall include the items of noncompliance that resulted in placing the ASC on probation and shall designate the period of the probation.

(2) During the probationary period, the ASC shall correct the items of noncompliance and provide a written report to HHSC that describes the corrective actions taken.

(3) HHSC may verify the corrective actions through an on-site inspection.

(e) Administrative penalty. HHSC may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(1) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(2) A proceeding to impose the penalty is considered to be a contested case under Government Code Chapter 2001.

(3) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed \$5,000.

(4) In determining the amount of an administrative penalty assessed under this section, HHSC shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(5) If HHSC initially determines that a violation occurred, HHSC shall give written notice of the report by certified mail to the person alleged to have committed the violation following the survey exit date. The notice shall include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(6) Within 20 days after the date the person receives the notice under paragraph (5) of this subsection, the person in writing may:

(A) accept the determination and recommended penalty of HHSC; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(7) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(8) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings (SOAH).

The hearing shall be conducted in accordance with Government Code Chapter 2001, and all applicable SOAH and department rules.

(9) Based on the proposal for the decision made by the administrative law judge under paragraph (8) of this subsection, the commissioner by order may find that a violation occurred and impose a penalty or may find that a violation did not occur. The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (7) of this subsection to the person alleged to have committed the violation in accordance with Government Code Chapter 2001. The notice shall include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(10) Within 30 days after the date an order of the commissioner under paragraph (7) of this subsection that imposes an administrative penalty becomes final, the person shall:

(A) pay the penalty; or

(B) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(11) Within the 30-day period prescribed by paragraph (10) of this subsection, a person who files a petition for judicial review may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving the court a supersedeas bond that is approved by the court for the amount of the penalty, and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by certified mail.

(C) If the commissioner receives a copy of an affidavit under subparagraph (B) of this paragraph, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code §243.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(12) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC may refer the matter to the attorney general for collection of the penalty. As provided by the Health and Safety Code §243.016(d), the attorney general may sue to collect the penalty.

(13) A decision by the court is governed by Health and Safety Code §243.016(e) and (f), and provides the following.

(A) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(B) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(14) The remittance of penalty and interest is governed by Health and Safety Code §243.016(g) and provides the following.

(A) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(B) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(C) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(15) The release of supersedeas bond is governed by Health and Safety Code §243.016(h), and provides the following.

(A) If the person gave a supersedeas bond and the court does not uphold the penalty, the court shall order, when the court's judgment becomes final, the release of the bond.

(B) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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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General Counsel

Department of State Health Services

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506. SPECIAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §506.61, concerning Inspection and Investigation Procedures; and §506.62, concerning Complaint Against a Texas Department of Health Representative; new §§506.61, concerning Integrity of Inspections and Investigations; 506.62, concerning Inspections; 506.63, concerning Complaint Investigations; 506.64, concerning Notice; 506.65, concerning Professional Conduct; and 506.66, concerning Complaint Against an HHSC Representative; and amendments to §506.71, concerning License Denial, Suspension, Revocation and Probation; and §506.73, concerning Administrative Penalties.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspections and complaint investigations procedures for special care facilities. These procedures require updating in order to hold facilities accountable during the inspection and investigation processes and ensure that necessary documentation is provided in a timely manner to HHSC surveyors. The proposal revises enforcement procedures to ensure accuracy and conform to statute. In addition, these updates ensure consistent practices across all Health Care Regulation (HCR) rulesets.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §506.61 and §506.62 deletes this content as no longer necessary. These procedures are being updated and new content will be provided in new §§506.61 - 506.66.

Proposed new §506.61, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

Proposed new §506.62, Inspections, makes necessary updates to requirements for inspections of special care facilities.

Proposed new §506.63, Complaint Investigations, makes necessary updates to requirements for investigations of special care facilities following a complaint.

Proposed new §506.64, Notice, informs providers of the required timeframes regarding responding to deficiencies, plans of correction, and the provision of additional evidence.

Proposed new §506.65, Professional Conduct, notifies providers that enforcement actions are reported to appropriate licensing authorities.

Proposed new §506.66, Complaint Against an HHSC Representative, informs providers about registering a complaint against an HHSC inspector or investigator.

The proposed amendment to §506.71, License Denial, Suspension, Revocation and Probation, creates consistency between this ruleset and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

The proposed amendment to §506.73, Administrative Penalties, makes necessary updates to reflect the transition of responsibility from the Texas Department of State Health Services to HHSC.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of health care facilities. Patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

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 the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R012" in the subject line.

SUBCHAPTER E. INSPECTIONS AND INVESTIGATIONS

26 TAC §506.61, §506.62

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.61. Inspection and Investigation Procedures.

§506.62. Complaint Against a Texas Department of Health Representative.

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 June 28, 2021.

TRD-202102478

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 8, 2021

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



26 TAC §§506.61 - 506.66

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.61. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of HHSC's inspection and investigation process, a facility:

(1) shall not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients; or

(2) shall not record, listen to, or eavesdrop on any internal discussion by or among HHSC staff unless it first informs HHSC staff that it will do so and obtains HHSC's written approval before beginning to record, listen to, or eavesdrop on the discussion.

(b) This section does not prohibit an individual from recording an HHSC interview with the individual.

§506.62. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order of the commissioner or the commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility's compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency's entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(f) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(h) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(i) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

§506.63. Complaint Investigations.

(a) A facility shall provide each client and applicable consenter at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC's jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility's compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the commissioner or the commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§506.64. Notice.

(a) A facility is deemed to have received any HHSC correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or e-mail.

(2) Within 10 calendar days of the facility's receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility, in writing, no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§506.65. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§506.66. Complaint Against an HHSC Representative.

(a) A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter.

(b) A complaint against an HHSC representative shall be registered with the HHSC Health Facility Compliance Manager.

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 June 28, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 8, 2021

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



SUBCHAPTER F. ENFORCEMENT

26 TAC §506.71, §506.73

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to

adopt rules that establish minimum standards for special care facilities.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.71. *License Denial, Suspension, Revocation and Probation.*

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by HHSC for failure to comply with statutes, rules, and orders applicable to them. ~~[The department may deny, suspend, suspend on an emergency basis, or revoke a license if the applicant or facility fails to comply with any provision of the Act or this chapter.]~~

(b) Denial, suspension or revocation of a license. HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(1) failure to comply with any provision of Health and Safety Code (HSC) Chapter 248;

(2) failure to comply with any provision of this chapter (Texas Administrative Code Title 26, Chapter 506) or any other applicable laws;

(3) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide an adequate licensure application or renewal information;

(7) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapter 248;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the facility, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(10) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 248 and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(14) failure to comply with applicable requirements within a designated probation period.

~~[(b) The department may take action under subsection (a) of this section for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the provisions of this chapter.]~~

(c) HHSC ~~[The department]~~ may suspend or revoke an existing valid license, or disqualify a person from receiving a license be-

cause of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates, HHSC ~~[the department]~~ shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In addition to the factors that may be considered under paragraph (1) of this subsection, HHSC ~~[the department]~~, in determining the present fitness of a person who has been convicted of a crime, shall consider the provisions of Texas Occupations Code, §53.022 and §53.023 (relating to Ineligibility for License).

(3) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(A) a violation of the Act;

(B) an offense involving moral turpitude;

(C) an offense relating to deceptive business practice;

(D) an offense of practicing any health-related profession without a required license;

(E) an offense under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) an offense under Title 5 of the Texas Penal Code involving a patient or client of a health care facility or agency; or

(G) an offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; or

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; or

(H) other misdemeanors or felonies which indicate an inability or tendency for the person to be unable to own or operate a facility if action by HHSC ~~[the department]~~ will promote the intent of the Act, this chapter or Texas Occupations Code, §53.022 and §53.023.

(d) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

(e) If HHSC ~~[the department]~~ proposes to deny, suspend, or revoke a license, the director shall notify the applicant or the facility by mail of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 20 ~~[30]~~ calendar days of receipt

of the notice. The request must be in writing and submitted to HHSC [the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756]. A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and HHSC's [the department's] formal hearing procedures in Texas Administrative Code (TAC) Title 25, Chapter 1 (relating to Miscellaneous Provisions) [Chapter 1 of this title (relating to Texas Board of Health)]. If the applicant or facility does not request a hearing, in writing, within 20 [30] calendar days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the third calendar [tenth calendar] day after the notice is mailed to the last address known to HHSC [the department] unless another date is reflected on a United States Postal Service return receipt.

(f) HHSC [The department] may issue an emergency order to suspend [or revoke] a license [to be] effective immediately when HHSC [the department] has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public [the] health and safety [of persons are threatened]. HHSC [The department] shall notify the facility of the emergency action by mail or personal delivery of the notice. On written request of [If requested by] the license holder[,], HHSC [the department shall conduct] for a hearing, HHSC will refer the matter to the State Office of Administrative Hearings. [which shall be not earlier than ten calendar days from the effective date of the suspension or revocation. The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and HHSC's the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).]

[(g) If a person violates a requirement of the Act or this chapter, the department may petition the district court to restrain the person from continuing the violation.]

(g) [(h)] In lieu of denying, suspending, or revoking the license, HHSC [the department] may place [schedule] the facility on [for a] probation for a period of not less than 30 days if the facility is found in repeated non-compliance and the facility's noncompliance does not endanger the health and safety of the public.

§506.73. Administrative Penalties.

(a) Imposition of penalty. The Texas Health and Human Services Commission (HHSC) [The department] may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(b) Deposit of penalty. A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(c) Contested case. A proceeding to impose the penalty is considered to be a contested case under Government Code, Chapter 2001.

(d) Amount of penalty.

(1) The amount of the penalty may not exceed \$1,000 for each violation, except for violations of §506.31(b)(6) of this chapter (relating to General Functions) [§425.31(b)(6) of this title (pertaining to General Functions)], which are limited to \$500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed \$5,000.

(2) In determining the amount of an administrative penalty assessed under this section, HHSC [the department] shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(e) Report and notice of violation and penalty.

(1) If HHSC [the department] initially determines that a violation occurred, HHSC [the department] will give written notice of the report by certified mail to the person alleged to have committed the violation.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based on the factors listed in subsection (d)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Penalty to be paid or hearing requested.

(1) Within 20 days after the date the person receives the notice sent under subsection (e) of this section, the person in writing may:

(A) accept the determination and recommended penalty of HHSC [the department]; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health (commissioner) or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(g) Hearing.

(1) If the person requests a hearing, the commissioner or the commissioner's designee shall refer the matter to the State Office of Administrative Hearings (SOAH).

(2) As mandated by Health and Safety Code, §248.105(a), the SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

(A) An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(h) Decision by executive commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative law judge under subsection (g)(2) of this section, the executive commissioner or the executive commissioner's designee by order may find that a violation

has occurred and may impose a penalty or may find that no violation has occurred.

(2) The executive commissioner or the executive commissioner's designee shall give notice of the executive commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(i) Options following decision. Within 30 days after the date the order of the commissioner under subsection (h) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(j) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (i) of this section, a person who files a petition for judicial review in accordance with subsection (i)(2) of this section may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by certified mail.

(2) If the commissioner receives a copy of an affidavit under paragraph (1)(B) of this subsection, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code (HSC), §248.108(b), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(k) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC [~~the department~~] may refer the matter to the attorney general for collection of the penalty.

(2) As provided by HSC, §248.109(b), the attorney general may sue to collect the penalty.

(l) Decision by court. A decision by the court is governed by HSC, §248.110, and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that no penalty is owed.

(m) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by HSC, §248.111, and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) Release of bond. The release of supersedeas bond is governed by HSC, §248.112, and provides the following.

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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 June 28, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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



CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §510.1, concerning Purpose; §510.2, concerning Definitions; §510.21, concerning General; §510.22, concerning Application and Issuance of Initial License; §510.23, concerning Application of Issuance Renewal License; §510.24, concerning Change of Ownership; §510.25, concerning Time Periods for Processing and Issuing Licenses; §510.26, concerning Fees; §510.41, concerning Facility Functions and Services; §510.43, concerning Patient Transfer Policy; §510.46, concerning Abuse and Neglect Issues; §510.61, concerning Patient Transfer Agreements; and §510.62, concerning Cooperative Agreements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to correct cross-references throughout 26 TAC, Chapter 510. When this chapter was transferred from 25 TAC, Chapter 134 to 26 TAC, Chapter 510, the cross-references and other relevant citations within the rules were not updated to accurately refer to other sections in 25 TAC and 26 TAC. These non-substantive changes will allow HHSC to enforce regulations for Private Psychiatric Hospitals and Crisis Stabilization Units following the mandated movement of rules to 26 TAC, while maintaining accurate references to necessary rules in both 25 TAC and 26 TAC. The proposed amendments also correct various outdated citations and references to programs that no longer exist, and update language to reflect current HHSC organization and consistency with statute and HHSC rule.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.1 updates the statutory reference for the rules and replaces the term "department" to "commission" due to the transition from the Texas Department of State Health Services (DSHS) to HHSC. The proposed amendment also replaces the term "mental hospital" with "psychiatric hospital."

The proposed amendment to §510.2 adds definitions for "commission" and "plan of correction" to increase consistency across the rule sets for licensed health care facilities; updates the definitions for "applicant" and "mental illness" for consistency across rule sets and for conformity to statute; removes the definitions for "board," "department," "director," "division," "learning disability," and "mental retardation," as they refer to defunct entities or inactive programs or are outdated terms no longer used in the chapter; and removes the following definitions as the information contained therein was moved to the applicable section of the chapter where the term appears: "legally reproduced form" moved to §510.41(g)(6), and "oral surgeon" moved to §510.41(a)(1)(C). The proposed amendment also deletes the definitions for "medical error," "reportable event," and "root cause analysis" related to the patient safety program. The patient safety program was created by House Bill 1614 during the 78th Legislature, Regular Session, 2003, however, the requirements set forth by the bill expired in 2007.

The proposed amendment to §510.21 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC and replaces the term "department" with "commission" due to the transition from DSHS to HHSC.

The proposed amendment to §510.22 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC and replaces the term "department" with "commission" due to the transition from DSHS to HHSC. The proposed amendment also updates language in §510.22(d)(2)(A) regarding "expiration date" by removing language for licenses issued prior to 2005 as these initial licenses have since expired and this language is no longer needed to distinguish between licenses issued prior to 2005. The reference to §510.87 located in subsection (f) is based on rules proposed elsewhere in this issue of the *Texas Register*.

The proposed amendment to §510.23 replaces the term "department" with "commission" due to the transition from DSHS to HHSC and deletes language in §510.23(b)(1) related to the patient safety program. The proposed amendment also updates language in §510.23(b)(3) regarding "expiration date" by removing language for licenses issued prior to 2005 as these renewal licenses have since expired and this language is no longer needed to distinguish between licenses issued prior to

2005. The reference to §510.82 located in subsection (b)(2) is based on rules proposed elsewhere in this issue of the *Texas Register*.

The proposed amendment to §510.24 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC and replaces the term "department" with "commission" due to the transition from DSHS to HHSC.

The proposed amendment to §510.26 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC and replaces the term "department" with "commission" due to the transition from DSHS to HHSC. The proposed amendment also updates the licensure period to 24 months as outlined in §510.23.

The proposed amendment to §510.41 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC and replaces the term "department" with "commission" due to the transition from DSHS to HHSC. The proposed amendment also adds the licensing entity for oral surgeons, describes the types of legally reproduced medical records and corrects grammar.

The proposed amendment to §510.43 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC, removes reference to a defunct agency, and updates language to present tense.

The proposed amendment to §510.46 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC, replaces the term "department" with "commission" due to the transition from DSHS to HHSC, and corrects grammar. The proposed amendment to §510.46(c)(3) updates the language for reporting responsibilities when reporting abuse; neglect; and illegal, unprofessional, and unethical conduct to communicate the need for immediacy. The change provides specificity and increases consistency with other rule sets for licensed health care facilities. The reference to §510.82 located in subsection (d)(2) is based on rules proposed elsewhere in this issue of the *Texas Register*.

The proposed amendment to §510.61 updates rule references to reflect the movement of rules from 25 TAC to 26 TAC.

The proposed amendment to §510.62 updates a rule reference to reflect the movement of the rule from 25 TAC to 26 TAC and replaces the term "department" with "commission" due to the transition from DSHS to HHSC. The proposed amendment also replaces the term "mental hospital" with "psychiatric hospital."

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;

- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed amendments to the rules are primarily non-substantive and reflect administrative corrections and updates, and therefore do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from more accurate and up-to-date citations and other information in HHSC rules, as well as greater compliance with existing statutes.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposal does not implement any new costs or fees to persons who must comply with this rule.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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

indicate "Comments on Proposed Rule 20R011" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §510.1, §510.2

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.1. Purpose.

(a) The purpose of this chapter is to implement the Private Mental Hospitals and Other Mental Health Facilities licensing Act,] Health and Safety Code, Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities), which requires psychiatric [mental] hospitals and mental health facilities that provide court-ordered mental health services to be licensed by the Texas Health and Human Services Commission [Department of Health].

(b) This chapter provides definitions, and establishes licensing procedures, operational requirements, standards for voluntary agreements, enforcement procedures, fire prevention and safety requirements, and physical plant and construction requirements for private psychiatric hospitals and crisis stabilization units.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulations and ordinances. This chapter must be followed where it exceeds other codes and ordinances.

§510.2. Definitions.

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

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

(2) ~~Adverse event~~--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(3) ~~Applicant~~--~~A~~ [The] person who seeks a private psychiatric hospital license or crisis stabilization unit license from HHSC and who is legally responsible for the operation of the facility [; whether by lease or ownership, who seeks a license from the department].

~~[(4) Board~~--The Texas Board of Health.]

(4) ~~[(5)]~~ Community center--A center established under Health and Safety Code, Chapter 534, Subchapter A.

(5) ~~[(6)]~~ Contaminated linen--Linen [which has been] soiled with blood or other potentially infectious materials or containing [may contain] sharps. Other potentially infectious materials means:

(A) ~~[the following]~~ human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any

body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV) containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(6) [(7)] Crisis stabilization unit (CSU)--A mental health facility operated by a community center or other entity designated by the local mental health authority [Texas Department of Mental Health and Mental Retardation] in accordance with Texas Health and Safety Code, §534.054, that provides treatment to individuals who are the subject of a protective custody order issued in accordance with Texas Health and Safety Code, §574.022.

(7) [(8)] Dentist--A person licensed to practice dentistry by the Texas State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

[(9) Department--The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.]

(8) [(10)] Dietitian--A person who is currently licensed by the Texas Department of Licensing and Regulation [State Board of Examiners of Dietitians] as a licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with the American Dietetic Association.

[(11) Director--The director of the Health Facility Licensing and Compliance Division, Texas Department of Health.]

[(12) Division--The Health Facility Licensing and Compliance Division, Texas Department of Health.]

(9) [(13)] Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance use disorder [abuse]) such that the absence of immediate medical attention could reasonably be expected to result in one or more [all] of the following:

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

(B) serious impairment to bodily functions;

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

(D) with respect to a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

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

(10) [(14)] Facility--A private psychiatric hospital or a crisis stabilization unit.

(11) [(15)] Facility administration--Administrative body of a facility headed by an individual who has the authority to represent the facility and who is responsible for the operation of the facility according to the policies and procedures of the facility governing body.

(12) [(16)] Fast-track projects--A construction project for [in] which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints [such as mandated deadlines].

(13) [(17)] Governing body--The governing authority of a facility [which is] responsible for the facility's organization, management, control, and operation, including appointment of the medical staff.[;] This term includes the owner or partners for facilities owned or operated by an individual or partners.

(14) [(18)] Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(15) HHSC--The Texas Health and Human Services Commission.

(16) [(19)] Hospital--A private psychiatric hospital.

(17) [(20)] Inpatient services--Services provided to a patient admitted to a hospital for an intended length of stay of 24 hours or greater.

[(21) Learning disability--When a severe discrepancy exists when the individual's assessed intellectual ability is above the mentally retarded range, but where the individual's assessed educational achievement in areas specified is more than one standard deviation below the individual's intellectual ability.]

[(22) Legally reproduced form--A medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium.]

(18) [(23)] Licensed vocational nurse--An individual who is currently licensed as a licensed vocational nurse (LVN) by the Texas Board of [Vocational Nurse Examiners] Nursing in accordance with Texas Occupations Code, Chapter 301 [302].

(19) [(24)] Licensee--A person or governmental unit who has been granted a private psychiatric hospital license or crisis stabilization unit license.

[(25) Medical error--The failure of a planned action to be completed as intended, the use of a wrong plan to achieve an aim, or the failure of an unplanned action that should have been completed, that results in an adverse event.]

(20) [(26)] Medical staff--Licensed physicians and other licensed practitioners permitted by law and by the facility to provide medical care independently in the facility.

(21) [(27)] Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental illness.

(22) [(28)] Mental illness--An illness, disease, or condition, other than epilepsy, dementia, substance use disorder, or intellectual disability [(other than a sole diagnosis of epilepsy, senility, substance use disorder, mental retardation, autism, or pervasive developmental disorder)] that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs [an individual's] behavior as demonstrated by recent disturbed behavior.

~~[(29) Mental retardation--Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.]~~

~~(23) [(30)] Minor--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.~~

~~(24) [(31)] Mobile unit--Any pre-manufactured structure, trailer, or self-propelled unit equipped with a chassis on wheels and intended to provide shared medical services to the community on a temporary basis. Some of these units are equipped with expanding walls[,] and designed to be moved on a daily basis.~~

~~[(32) Oral surgeon--A person licensed by the State Board of Dental Examiners in the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial regions.]~~

~~(25) [(33)] Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the facility.~~

~~(26) [(34)] Owner--One of the following persons which will hold or does hold a license issued under Health and Safety Code, Chapter 577, in the person's name or the person's assumed name:~~

- ~~(A) a corporation;~~
- ~~(B) a governmental unit;~~
- ~~(C) a limited liability company;~~
- ~~(D) an individual;~~
- ~~(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;~~

~~(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or~~

~~(G) all co-owners under any other business arrangement.~~

~~(27) [(35)] Patient--An individual who is receiving mental health services under this chapter.~~

~~(28) [(36)] Person--An individual, firm, partnership, corporation, association, joint stock company, joint venture, or local authority, and includes a receiver, trustee, assignee, or other similar representative of those entities.~~

~~(29) [(37)] Pharmacist--A person who is licensed to practice pharmacy by the Texas State Board of Pharmacy in accordance with Texas Occupations Code, Chapter 558.~~

~~(30) [(38)] Physician--An individual who is:~~

~~(A) licensed as a physician by the Texas Medical Board [Texas State Board of Medical Examiners] in accordance with Chapter 155 of the Texas Occupations Code; or~~

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

~~(31) Plan of correction--A documented and directed response to any compliance issue identified in a report provided to the facility by HHSC staff after a facility inspection or investigation,~~

which is required to state how and when any compliance issues identified in the report will be corrected.

~~(32) [(39)] Podiatrist--A podiatrist licensed by the Texas Department of Licensing and Regulation [State Board of Podiatry Examiners].~~

~~(33) [(40)] Political subdivision--A county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.~~

~~(34) [(41)] Practitioner--A health care professional licensed in the State of Texas, other than a physician.~~

~~(35) [(42)] Premises--A premises is [may be any of the following]:~~

~~(A) a single building where inpatients receive hospital services; or~~

~~(B) multiple buildings where inpatients receive hospital services, provided that the following criteria are met:~~

~~(i) all inpatient buildings and inpatient services are subject to the control and direction of the governing body of the hospital;~~

~~(ii) all inpatient buildings are within a 30-mile radius of the main address of the licensee;~~

~~(iii) there is integration of the organized medical staff of the hospital;~~

~~(iv) there is a single chief executive officer who reports directly to the governing body and through whom all administrative flows and who exercises control and surveillance over all administrative activities of the hospital;~~

~~(v) there is a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital; and~~

~~(vi) each building that is geographically separate from other buildings contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination thereof, in the building for hospital inpatients.~~

~~(36) [(43)] Private psychiatric hospital--A hospital that provides inpatient mental health services to individuals with a mental illness or with a substance use disorder except that, at all times, a majority of the individuals admitted are individuals with a mental illness. Such services include psychiatric assessment and diagnostic services, physician services, professional nursing services, and monitoring for patient safety provided in a restricted environment.~~

~~(37) [(44)] Registered nurse--An individual who is licensed as a registered nurse by the Texas Board of Nursing [Nurse Examiners] in accordance with Texas Occupations Code, Chapter 301.~~

~~(38) [(45)] Relocatable unit--Any structure, not on wheels, built to be relocated at any time and provide medical services. These structures vary in size.~~

~~[(46) Reportable event--A medical error or adverse event or occurrence which the facility is required to report to the department, as set out in §134.47 of this title (relating to Patient Safety Program).]~~

~~[(47) Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event. It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organiza-~~

tional processes, and identifies potential improvements in processes or systems.]

(39) [(48)] Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(40) [(49)] Transfer--The movement (including the discharge) of an individual outside a facility at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the facility, but does not include such a movement of an individual who has been declared dead[,] or leaves the facility without the permission of any such person.

(41) [(50)] Transportable unit--Any pre-manufactured structure or trailer, equipped with a chassis on wheels, intended to provide shared medical services to the community on an extended temporary basis. These units are designed to be moved periodically, depending on need.

(42) [(51)] Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in facilities.

(43) [(52)] Violation--Failure to comply with a [the] licensing statute, [a] rule or standard, special license provision, or [an] order issued by HHSC [the commissioner of health or the commissioner's designee], adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative [a] penalty.

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 June 28, 2021.

TRD-202102475

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 8, 2021

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



SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

26 TAC §§510.21 - 510.26

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper

care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.21. General.

(a) License required.

(1) A facility shall obtain a license prior to admitting patients.

(2) Upon written request, HHSC [the department] shall furnish a person with an application for a private psychiatric hospital or a crisis stabilization unit license.

(3) The license application shall be submitted in accordance with §510.22 of this subchapter [~~§134.22 of this title~~] (relating to Application and Issuance of Initial License). The applicant shall retain copies of all application documents submitted to HHSC [the department].

(b) Compliance.

(1) A hospital or crisis stabilization unit (CSU) shall comply with [the provisions of] the Health and Safety Code (HSC), Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities), this chapter, and the following rules: [administered by Texas Board of Mental Health and Mental Retardation (TDMHMR) during the licensing period.]

(A) Chapter 404, Subchapter E of [this title] Title 25 (relating to Rights of Persons Receiving Mental Health Services);

(B) Chapter 405, Subchapter E of [this title] Title 25 (relating to Electroconvulsive Therapy);

(C) Chapter 414, Subchapter I of Title 25 (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); [Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication);]

(D) Chapter 415, Subchapter F of Title 25 (relating to Interventions in Mental Health Programs); and [Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs);]

(E) Chapter 568 of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals). [Chapter 411, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals);]

(2) A CSU shall also comply with Chapter 306, Subchapter B [the provisions of HSC, Chapter 577, this chapter, Chapter 411, Subchapter M] of this title (relating to Standards of Care and Treatment in Crisis Stabilization Units) [, and paragraph (1)(A)-(D) of this subsection].

(c) Scope of facility license.

(1) A facility license is issued for the premises and person or governmental unit named in the application.

(2) A facility license shall not include outpatient services located apart from the licensed premises.

(3) A facility license shall not include spaces licensed by another licensing agency.

(4) Multiple facilities may share one building.

(A) Each facility shall be licensed separately.

(B) Spaces within the building may not be included under more than one facility license; and

(C) Each facility in the building shall comply with the requirements contained in Subchapter G of this chapter (relating to Physical Plant and Construction Requirements) [of §134.125 (relating to Building with Multiple Occupancies)].

(5) Multiple hospitals may be licensed under one license number.

(A) Hospitals must comply with the following in order to be licensed under a multiple hospital license:

(i) meet the criteria for multiple buildings in the definition of premises in §510.2(35) [§134.2(39)] (relating to Definitions); and

(ii) when the multiple site location is a previously licensed hospital, the hospital must meet the architectural requirements contained in Subchapter G of this chapter (relating to Physical Plant and Construction Requirements) [§134.121(b) of this title (relating to Requirements for Buildings in which Existing Licensed Facilities are Located)] and be approved for occupancy by the HHSC's Architectural Review Unit [division's Architectural and Engineering Program].

(B) HHSC [The department] will issue a license listing the primary hospital and multiple location site(s) when the hospitals meet the requirements of subparagraph (A) of this paragraph, and the primary hospital has submitted:

(i) a written request to HHSC [the department] for a multiple location application; and

(ii) a completed application and licensing fee.

(C) When a multiple location application and a change of ownership application are received simultaneously, HHSC [the department] will process the change of ownership application separately prior to the multiple location addendum.

(d) Display. A facility shall prominently and conspicuously display the license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(e) Alteration. A facility license shall not be altered.

(f) Transfer or assignment prohibited. A facility license shall not be transferred or assigned. The facility shall comply with the provisions of §510.24 of this subchapter [§134.24 of this title] (relating to Change of Ownership) in the event of a change in the ownership.

(g) Changes which affect the license.

(1) A facility shall notify HHSC [the department] in writing prior to the occurrence of any of the following:

(A) addition or deletion of those services indicated on the license application;

(B) changes in designed bed capacity as the phrase is used in §510.26(b)(1)(A) - (C) of this subchapter [§134.26(b)(1)(A)-(C) of this title] (relating to Fees);

(C) request to change license classification; and

(D) any construction, renovation, or modification of the facility buildings.

(2) A facility shall notify HHSC [the department] in writing at the time of the occurrence of any of the following:

(A) cessation of operation of the facility. The facility shall include in the written notice the location where the medical

records will be stored and the identity and telephone number of the custodian of the medical records;

(B) change in certification or accreditation status; and

(C) change in facility name, telephone number or administrator.

§510.22. Application and Issuance of Initial License.

(a) Application submittal. The applicant shall submit the following documents to HHSC [the department] no earlier than 60 calendar days prior to the projected opening date of the facility:

(1) an accurate and complete application form;

(2) a copy of the facility's patient transfer policy which is developed in accordance with §510.43 of this chapter [§134.43 of this title] (relating to Patient Transfer Policy) and is signed by both the chairman and secretary of the governing body attesting to the date the policy was adopted by the governing body and the effective date of the policy;

(3) a copy of the facility's memorandum of transfer form which contains at a minimum the information described in §510.43(d)(10)(B) of this chapter [§134.43(d)(10)(B) of this title];

(4) for existing facilities, a copy of a fire safety survey indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year prior to the opening date. For new construction, additions, and renovation projects, written approval by the local building department and local fire authority shall be submitted at the time of the final construction survey by HHSC [the department];

(5) documentation of accreditation by the Joint Commission on Accreditation of Healthcare Organizations, if applicable;

(6) the appropriate license fee as required in §510.26 of this subchapter [§134.26 of this title] (relating to Fees);

(7) if the applicant is a sole proprietor, partnership with individuals as a partner, or a corporation in which an individual has an ownership interest of at least 25% of the business entity, the names and social security numbers of the individuals; and

(8) a multiple hospital location application form for multiple hospitals to be licensed under a single license number, if applicable.

(b) Additional documentation for new facilities or conversions from non facility buildings. In addition to the document submittal requirements in subsection (a) of this section, the following shall be completed prior to the issuance of a license.

(1) Preliminary and final architectural plans and specifications shall be submitted for review and approval by HHSC [the department] in accordance with Subchapter G of this chapter (relating to Physical Plant and Construction Requirements) [§134.127 of this title (relating to Preparation, Submittal, Review and Approval of Plans)].

(2) For new construction, surveys shall be conducted by HHSC [the department] in accordance with Subchapter G of this chapter [§134.128(b) of this title (relating to Construction, Surveys, and Approval of Project)] to determine that the facility was constructed or remodeled in accordance with this chapter.

(3) When an applicant intends to reopen and license a building formerly licensed as a hospital or crisis stabilization unit, an on-site survey shall be conducted by HHSC [the department] in accordance with Subchapter G of this chapter [§134.128(b) of this title] to determine compliance with applicable construction and fire safety requirements.

(4) All plan review and construction survey fees shall be paid to HHSC [~~the department~~].

(5) A certificate of occupancy approved by the local fire authority, and issued by the city building inspector, if applicable, shall be obtained and a copy submitted to HHSC [~~the department~~].

(6) A complete and accurate Final Construction Approval form signed by facility administration shall be submitted to HHSC [~~the department~~].

(c) Presurvey conference. The applicant or the applicants representative shall attend a presurvey conference at the office designated by HHSC [~~the department~~]. The purpose of the presurvey conference, which is conducted by HHSC [~~department~~] staff, is to review licensure rules and survey documents and provide consultation prior to the on-site licensure survey. HHSC [~~The department~~] may waive the presurvey conference requirement.

(d) Issuance of license. When it is determined that the facility has complied with subsections (a) - (c) [(a)-(e)] of this section, HHSC [~~the department~~] shall issue the license to the applicant.

(1) Effective date. The license shall be effective on the date the facility is determined to be compliant [~~in compliance~~] with subsections (a) - (c) [(a)-(e)] of this section. The effective date shall not be before [~~prior to~~] the date of the final construction survey conducted by HHSC [~~the department~~].

(2) Expiration date. For initial licenses issued:

(A) If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

~~[(A) For initial licenses issued prior to January 1, 2005.]~~

~~[(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.]~~

~~[(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.]~~

(B) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

~~[(B) For initial licenses issued January 1, 2005, or after.]~~

~~[(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.]~~

~~[(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.]~~

(e) Withdrawal of application. If an applicant decides not to continue the application process for a license or renewal of a license, the application may be withdrawn. HHSC [~~The department~~] shall acknowledge receipt of the request to withdraw.

(f) Denial of a license. Denial of a license shall be governed by §510.87 of this chapter [~~§134.83 of this title~~] (relating to Enforcement).

(g) Survey. During the initial licensing period, HHSC [~~the department~~] shall conduct a survey of the facility to ascertain compliance with the provisions of the Health and Safety Code, Chapter 577 and this chapter.

(1) A facility shall request an on-site survey to be conducted after one inpatient has been admitted and provided services.

(2) A facility shall be providing services to at least one inpatient in the facility at the time of the survey.

(3) If a hospital has applied to participate in the federal Medicare program, the survey may be conducted in conjunction with the licensing survey to determine compliance with 42 Code of Federal Regulations, Part 482 (relating to Medicare Conditions of Participation for Hospitals).

§510.23. Application and Issuance of Renewal License.

(a) Renewal notice. HHSC [~~The department~~] shall send a renewal notice to a facility at least 60 calendar days before the expiration date of a license.

(1) If the facility has not received the renewal notice from HHSC [~~the department~~] within 45 calendar days prior to the expiration date, it is the duty of the facility to notify HHSC [~~the department~~] and request a renewal application for a license.

(2) If the facility fails to submit the application and fee within 15 calendar days prior to the expiration date of the license, HHSC [~~the department~~] shall send by certified mail to the facility a letter advising that unless the license is renewed, the facility must cease operations upon the expiration of the license.

(b) Renewal license. HHSC [~~The department~~] shall issue a renewal license to a facility which meets the minimum requirements for a license.

(1) The facility shall submit the following to HHSC [~~the department~~] prior to the expiration date of the license:

(A) a complete and accurate application form;

(B) a copy of a fire safety survey indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year prior to the application date;

(C) the renewal license fee; and

(D) documentation of accreditation by the Joint Commission on Accreditation of Healthcare Organizations, if applicable. ~~[(3)]~~

~~[(E) an annual events report in accordance with §134.47(b)(1) of this title (relating to Patient Safety Program); and]~~

~~[(F) a best practices report in accordance with §134.47(b)(2) of this title.]~~

(2) HHSC [~~The department~~] may conduct a survey prior to issuing a renewal license in accordance with §510.82 of this chapter (relating to Inspections) [~~§134.81 of this title (relating to Survey and Investigation Procedures)~~].

~~[(3) Renewal licenses issued prior to January 1, 2005, will be valid for 12 months.]~~

~~[(4) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 or 24 months; to be determined by the department prior to the time of license renewal.]~~

~~[(5)]~~ Renewal licenses [~~issued January 1, 2006, or after~~] will be valid for 24 months.

(c) Notice to cease operation and return license. If a facility fails to submit the complete and accurate application form, documents, and fee by the expiration date of the license, HHSC [~~the department~~] shall notify the facility by certified mail that it must cease operation and immediately return the license by certified mail to HHSC [~~the de-~~].

partment]. If the facility wishes to provide services after the expiration date of the license, it shall apply for a license under §510.22 of this subchapter [~~§134.22 of this title~~] (relating to Application and Issuance of Initial License).

§510.24. Change of Ownership.

(a) Change of ownership defined. A change of ownership occurs when there is a change in the person legally responsible for the operation of the facility, whether by lease or by ownership.

(1) If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except that the corporation must notify HHSC [the department] within 10 calendar days after the effective date of the name change.

(2) The sale of stock of a corporate licensee does not cause this subsection to apply.

(b) License application required. The new owner shall submit an application for an initial license to HHSC [the department] prior to the date of the change of ownership or not later than 10 calendar days following the date of a change of ownership. The application shall be in accordance with §510.22 of this subchapter [~~§134.22 of this title~~] (relating to the Application and Issuance of Initial License). In addition to the documents required in §510.22 of this subchapter [~~§134.22 of this title~~], the applicant shall include the effective date of the change of ownership.

(c) Surveys. The on-site construction and health surveys required by §510.22 of this subchapter [~~§134.22 of this title~~] may be waived by HHSC [the department].

(d) Issuance of license. When the new owner has complied with the provisions of §510.22 of this subchapter [~~§134.22 of this title~~], HHSC [the department] shall issue a license which shall be effective the date of the change of ownership.

(e) Expiration of license. The expiration date of the license shall be in accordance with §510.22(d)(2) of this subchapter [~~§134.22(d)(2) of this title~~].

(f) License void. The previous owner's license shall be void on the effective date of the new owner's license.

§510.25. Time Periods for Processing and Issuing Licenses.

(a) General.

(1) The receipt date for an application for an initial license or a renewal license is the date the application is received by HHSC [the division].

(2) An application for an initial license is complete when HHSC [the division] has received, reviewed, and found acceptable the information described in §510.22(a) and (b) of this subchapter [~~§134.22(a) and (b) of this title~~] (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when HHSC [the division] has received, reviewed, and found acceptable the information described in §510.23(b) of this subchapter [~~§134.23(b) of this title~~] (relating to Application and Issuance of Renewal License).

(b) Time periods. An application for an initial license or renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date HHSC [the division] receives the application and ends on the date the license is issued, or, if the application is received incomplete, the period ends on the

date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 20 working days.

(2) The second time period begins on the date HHSC [the division] receives the last item necessary to complete the application and ends on the date the license is issued. The second time period is 20 working days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods [as] stated in subsection (b) of this section, the applicant has the right to request HHSC [the division to] reimburse in full the fee paid for that [in that particular] application process. If HHSC [the division] does not agree [that] the established periods have been violated or finds [that] good cause existed for exceeding the established periods, the request shall be denied.

(2) Good cause for exceeding the period established exists [is considered to exist] if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed which gave good cause for exceeding the established periods.

(d) Appeal. If the request for full reimbursement authorized by subsection (c) of this section is denied, the applicant may then appeal to the HHSC Executive Commissioner [commissioner of health] (commissioner) for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting full reimbursement of all filing fees paid because the application was not processed within the adopted time period. HHSC [the division] shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and HHSC [the division].

(e) Contested case hearings. The procedures set out in §1.21 of Title 25 [this title] apply to all hearings requested under this chapter.

§510.26. Fees.

(a) General.

(1) All fees paid to HHSC [the department] are nonrefundable with the exception of fees for surveys that were not conducted.

(2) All fees shall be paid to HHSC [the department].

(b) License fees.

(1) The fee for an initial license or a renewal license is \$200 [~~\$100~~] per bed per 24 [~~12~~] months based upon the designed bed capacity. The total fee may not be less than \$6,000 [~~\$3,000~~] per 24 [~~12~~] months. The designed bed capacity is determined as follows.

(A) The designed bed capacity is the maximum number of patient beds that can be accommodated in rooms that comply with the requirements for patient room suites in Subchapter G of this chapter (relating to Physical Plant and Construction Requirements) [~~§134.123 of this title (relating to Spatial Requirements for New Construction)~~].

(B) The maximum designed bed capacity includes beds that comply with the requirements in Subchapter G of this chapter [~~§134.123 of this title~~] even if the beds are unoccupied or the space

is used for other purposes such as offices or storage rooms, provided such rooms can readily be returned to patient use. All required support and service areas must be maintained in place. For example, the removal of a nurse station in an unused patient bedroom wing of 20 beds would effectively eliminate those 20 beds from the designed capacity.

(C) The number of licensed beds in a multiple occupancy room shall be determined by the design even if the number of beds actually placed in the room is less than the designed capacity.

(2) An additional fee shall be submitted with the Final Construction Approval form for an increase in the number of beds resulting from an approved construction project and an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section.

(3) A facility will not receive a refund of previously submitted fees should the designed bed capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by HHSC [the department] in accordance with in accordance with Subchapter G of this chapter [§134.127 of this title (relating to Preparation, Submittal, Review and Approval of Plans)].

(1) Construction plans will not be reviewed or approved until the required fee and an application for plan review are received by HHSC [the department].

(2) Plan review fees are based upon the estimated construction project costs which are the total expenditures required for a proposed project from initiation to completion, including at least the following items.

(A) Construction project costs shall include expenditures for physical assets such as:

- (i) site acquisition;
- (ii) soil tests and site preparation;
- (iii) construction and improvements required as a result of the project;
- (iv) building, structure, or office space acquisition;
- (v) renovation;
- (vi) fixed equipment; and
- (vii) energy provisions and alternatives.

(B) Construction project costs shall include expenditures for professional services including:

- (i) planning consultants;
- (ii) architectural fees;
- (iii) fees for cost estimation;
- (iv) legal fees;
- (v) management fees; and
- (vi) feasibility study.

(C) Construction project costs shall include expenditures or costs associated with financing, excluding long-term interest, but including:

- (i) financial advisor;

- (ii) fund-raising expenses;
- (iii) lender's or investment banker's fee; and
- (iv) interest on interim financing.

(D) Construction project costs shall include expenditure allowances for contingencies including:

- (i) inflation;
 - (ii) inaccurate estimates;
 - (iii) unforeseen fluctuations in the money market;
- and
- (iv) other unforeseen expenditures.

(3) Regarding purchases, donations, gifts, transfers, and other comparable arrangements whereby the acquisition is to be made for no consideration or at less than the fair market value, the project cost shall be determined by the fair market value of the item to be acquired as a result of the purchase, donation, gift, transfer, or other comparable arrangement.

(4) The plan review fee schedule based on cost of construction is:

- (A) \$100,000 or less: \$300;
- (B) \$100,001 to \$600,000: \$850;
- (C) \$600,001 to \$2,000,000: \$2,000;
- (D) \$2,000,001 to \$5,000,000: \$3,000;
- (E) \$5,000,001 to \$10,000,000: \$4,000; and
- (F) \$10,000,001 and over: \$5,000.

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on \$105 per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) Construction survey fees. A fee of \$500 and an Application for Survey form for each survey shall be submitted to HHSC [the department] at least three weeks prior to the anticipated survey date. Construction surveys will not be conducted until all required fees are received by HHSC [the department]. If additional construction surveys of the proposed project are requested, the appropriate additional fees shall be submitted prior to any surveys conducted by the staff of HHSC [the department]. When follow up construction surveys are performed to verify plans of correction, the fee shall be submitted upon completion of the survey.

(e) Cooperative agreement application fee. The application fee for a cooperative agreement, established under Health and Safety Code, Chapter 314, is \$10,000. The application fee shall be submitted with an application for a cooperative agreement.

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

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§510.41, 510.43, 510.46

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.41. Facility Functions and Services.

(a) Anesthesia services. If the hospital furnishes anesthesia services, these services shall be provided in a well-organized manner under the direction of a qualified physician. The anesthesia service is responsible for all anesthesia administered in the hospital.

(1) Organization and staffing. The organization of anesthesia services shall be appropriate to the scope of the services offered. Anesthesia shall be administered only by:

- (A) a qualified anesthesiologist;
- (B) a physician (other than an anesthesiologist);

(C) a dentist, oral surgeon (licensed by the State Board of Dental Examiners), or podiatrist who is qualified to administer anesthesia under state law; or

(D) a certified registered nurse anesthetist who is under the supervision, as set forth in the Medical Practice Act, Texas Occupations Code, Title 3, Subtitle B, and the Nursing Practice Act, Texas Occupations Code, Chapter 301, of the operating physician or of an anesthesiologist who is immediately available if needed.

(2) Delivery of services. Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedures shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(A) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under paragraph (1) of this subsection shall be performed within 48 hours prior to the procedure.

(B) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occurring during the anesthesia including time, description of symptoms, review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the recovery room and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient color.

(i) With respect to inpatients, a post-anesthesia evaluation for proper anesthesia recovery shall be performed after transfer from recovery and within 48 hours after the procedure by the person

administering the anesthesia, registered nurse (RN), or physician in accordance with policies and procedures approved by the medical staff.

(ii) With respect to outpatients, immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, RN, or physician in accordance with policies and procedures approved by the medical staff.

(b) Dietary services. The facility shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a facility that has a contract with an outside food management company or an arrangement with another facility may meet this requirement if the company or other facility has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the company or other facility maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the facility medical staff for recommendations of dietetic policies affecting patient treatment. The facility shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) A facility shall have an employee who is qualified by experience or training to serve as director of the food and dietetic service[;] and [be] is responsible for the daily management of the dietary services. This employee shall be full-time in a hospital; the crisis stabilization unit employee does not have to be full-time.

(B) There shall be a qualified dietitian who works full-time, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(i) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

(iv) make an assessment of the nutritional status and adequacy of nutritional regimen, as appropriate;

(v) provide diet counseling and teaching, as appropriate;

(vi) document nutritional status and pertinent information in patient medical records, as appropriate;

(vii) approve menus; and

(viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

(i) participate in established departmental or facility training pertinent to assigned duties;

(ii) conform to food handling techniques in accordance with paragraph (2)(E)(vii) of this subsection;

(iii) adhere to clearly defined work schedules and assignment sheets; and

(iv) comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job specific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include, but not be limited to:

(i) quality assurance;

(ii) frequency of meals served;

(iii) non-routine occurrences; and

(iv) identification of patient trays;

(E) maintain authority and responsibility for the following, but not be limited to:

(i) orientation and training;

(ii) performance evaluations;

(iii) work assignments;

(iv) supervision of work and food handling techniques;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) menu planning; and

(vii) ensuring compliance with Chapter 228 of Title 25 [this title] (relating to Retail Food).

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by the physician(s) responsible for the care of the patients. The dietary department of the facility shall:

(i) establish procedures for the processing of therapeutic diets to include, but not be limited to:

(I) accurate patient identification;

(II) transcription from nursing to dietary services;

(III) diet planning by a dietitian;

(IV) regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

(ii) ensure that therapeutic diets are planned in writing by a qualified dietitian;

(iii) ensure that menu substitutions are approved by a qualified dietitian;

(iv) document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate therapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of the physician(s) responsible for the care of the patients. The following requirements shall be met.

(i) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the Recommended Dietary Allowances, as published by the Food and Nutrition Board, National Academy of Sciences, National Research Council, Tenth edition, 1989, which may be obtained by writing the National Academy Press, 2101 Constitution Avenue, Box 285, Washington, D.C. 20055, telephone (888) 624-8373.

(ii) A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The facility shall adopt, implement, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

(i) be revised as needed, not to exceed 5 years;

(ii) be appropriate for the diets routinely ordered in the facility;

(iii) have standards in compliance with the RDA;

(iv) contain specific diets which are not in compliance with RDA; and

(v) be used as a guide for ordering and serving diets.

(c) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the facility, including appointment of the medical staff. For facilities owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution or bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff. The governing body shall:

(A) ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced;

(B) approve medical staff bylaws and other medical staff rules and regulations;

(C) determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff;

(D) ensure that criteria for selection include individual character, competence, training, experience, and judgment;

(E) ensure that under no circumstances is the accordance of staff membership or professional privileges in the facility dependent solely upon certification, fellowship or membership in a specialty body or society;

(F) ensure the process for considering applications for medical staff membership and privileges affords each candidate for appointment procedural due process;

(G) ensure in granting or refusing medical staff membership or privileges, the facility does not differentiate on the basis of the academic medical degree;

(H) ensure that equal recognition is given to training programs accredited by the Accreditation Council on Graduate Medical Education and by the American Osteopathic Association if graduate medical education is used as a standard or qualification for medical staff membership or privileges for a physician;

(I) ensure that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists if board certification is used as a standard or qualification for medical staff membership or privileges for a physician;

(J) ensure that the medical staff is accountable to the governing body for the quality of care provided to patients;

(K) ensure that a facility's credentials committee acts expeditiously and without unnecessary delay when a candidate for appointment submits a completed application, as defined by each hospital, for medical staff membership or privileges, in accordance with the following:

(i) The credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received;

(ii) The governing body shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received; and

(iii) The facility must notify the applicant in writing of the facility's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken;

(L) ensure the facility complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with the Medical Practice Act, Occupations Code, §160.002 and §160.003.

(5) Facility administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the facility.

(6) Patient care. In accordance with facility policy, the governing body shall ensure that:

(A) every patient is under the care of a physician. This provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law;

(B) patients are admitted to the facility only by members of the medical staff who have been granted admitting privileges; and

(C) a physician is on duty or on-call at all times.

(7) Contracted services. The governing body shall be responsible for services furnished in the facility whether or not they are furnished directly or under contracts. The governing body shall ensure that a contractor of services (including one for shared services and joint ventures) furnishes services in a safe and effective manner that permits the facility to comply with all applicable rules and standards for contracted services.

(8) Nurse staffing. The governing body shall adopt, implement and enforce a written nurse staffing policy to ensure that an

adequate number and skill mix of nurses are available to meet the level of patient care needed. The governing body policy shall require that hospital administration adopt, implement and enforce a nurse staffing plan and policies that:

(A) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(B) are based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) ensure that all nursing assignments consider client safety, and are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(D) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(E) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(F) protect from retaliation nurses who provide input to the nurse staffing committee; and

(G) comply with subsection (j) of this section.

(d) Infection control. The facility shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and investigation of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control coordinator. The facility shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling nosocomial infections and communicable diseases between patients and personnel.

(B) The infection control coordinator shall maintain a log of all reportable diseases and nosocomial infections designated as epidemiologically significant according to the facility's infection control policies.

(C) There shall be a written policy for reporting all reportable diseases to the local health authority or the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services [5 Mail Code 2822, P.O. Box 149347, Austin, TX 78714-9347], in accordance with Chapter 97 of Title 25 [~~this title~~] (relating to Communicable Diseases).

(2) Responsibilities of the chief executive officer (CEO), medical staff, and chief nursing officer (CNO). The CEO, the medical staff, and the CNO shall be responsible for the following.

(A) The facility-wide quality assurance program and training programs shall address problems identified by the infection control coordinator.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The facility shall adopt, implement, and enforce a written policy to monitor compliance of the facility and its personnel and medical staff with universal precautions in accordance with Health and Safety Code, Chapter 85, Subchapter I (relating to the Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

(e) Laboratory services. The facility shall provide [directly,] or have available, adequate laboratory services to meet the needs of its patients.

(1) Facility laboratory services. A facility that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 Code of Federal Regulations (CFR), §§493.1 - 493.1780. CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The facility shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The facility shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(4) Chemical hygiene. A facility that provides laboratory services directly shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(f) Linen and laundry services. The facility shall provide sufficient clean linen to ensure the comfort of the patient. The facility, whether it operates its own laundry or uses commercial service, shall ensure the following.

(1) Employees of a facility involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up inservice training to ensure a safe product for patients and to safeguard employees in their work.

(2) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(3) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.

(4) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(5) Contaminated linen shall be handled as little as possible and with minimum agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(6) All contaminated linen shall be bagged or put into carts at the location where it was used.

(A) Bags containing contaminated linen shall be closed prior to transport to the laundry.

(B) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(C) All linen placed in chutes shall be bagged.

(D) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(7) Linen shall be processed as follows:

(A) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in Subchapter G of this chapter (relating to Physical Plant and Construction Requirements) [Table 5 of §134.134(e) of this title (relating to Tables)] shall be met.

(B) If low temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(C) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(8) Flammable liquids shall not be used in the laundry.

(g) Medical record services. The facility shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The facility shall employ adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The facility shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The facility shall adopt, implement, and enforce a policy to ensure that the facility complies with Health and Safety Code, §576.005 (relating to Confidentiality of Records) and Chapter 611, (relating to Mental Health Records).

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) The facility shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all entries to the records.

(A) The author of each entry shall be identified and shall authenticate his or her entry.

(B) Authentication shall include signatures, written initials, or computer entry.

(C) Use of signature stamps by physicians may be allowed in facilities when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the facility shall have on file a signed statement to the effect that he or she is the only one who has the stamp and uses it. Delegation of use to another individual shall not be acceptable.

(D) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(E) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(6) Medical records (reports and printouts) shall be retained by the facility in their original or legally reproduced form, which is a medical record retained in hard copy, microform (microfilm or microfiche), or another electronic medium, for a period of at least ten years. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

- (A) identification data;
- (B) the medical history of the patient;
- (C) evidence of a physical examination and psychiatric evaluation;
- (D) admitting diagnosis;
- (E) diagnostic and therapeutic orders;
- (F) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;
- (G) treatment plans;
- (H) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;
- (I) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;
- (J) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;
- (K) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and
- (L) final diagnosis with completion of medical records within 30 calendar days following discharge.

(7) If a patient was less than 18 years of age at the time he was last treated, the facility may authorize the disposal of those medical records relating to the patient on or after the date of his 20th birthday or on or after the 10th anniversary of the date on which he was last treated, whichever date is later.

(8) The facility shall not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(9) If a licensed facility should close, the facility shall notify HHSC [~~the department~~] at the time of closure the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(h) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be maintained.

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body; and

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges.

(i) Mobile, transportable, and relocatable units. If the facility provides diagnostic procedures or treatments in mobile, transportable, or relocatable units, the facility shall adopt, implement and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the facility premises for diagnostic procedures or treatment.

(j) Nurse staffing.

(1) The hospital shall establish a nurse staffing committee as a standing committee of the hospital. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this paragraph.

(A) The committee shall be composed of:

(i) at least 60% registered nurses who are involved in direct patient care at least 50% of their work time and selected by their peers who provide direct care during at least 50% of their work time;

(ii) members who are representative of the types of nursing services provided at the hospital; and

(iii) the chief nursing officer of the hospital who is a voting member.

(B) Participation on the committee by a hospital employee as a committee member shall be part of the employee's work time and the hospital shall compensate that member for that time accordingly. The hospital shall relieve the committee member of other work duties during committee meetings.

(C) The committee shall meet at least quarterly.

(D) The responsibilities of the committee shall be to:

(i) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of paragraph (2) of this subsection;

(ii) review, assess and respond to staffing concerns expressed to the committee;

(iii) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(iv) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(v) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(2) The hospital shall adopt, implement and enforce a written official nurse services staffing plan. As used in this subsection, "patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

(A) The official nurse services staffing plan and policies shall:

(i) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(ii) be based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(iii) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(iv) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(v) protect nurses who provide input to the nurse staffing committee from retaliation; and

(vi) comply with this subsection.

(B) The plan shall:

(i) set minimum staffing levels for patient care units that are:

(I) based on multiple nurse and patient considerations; an

(II) determined by the nursing assessment and in accordance with evidence-based safe nursing standards; and

(ii) include a method for adjusting the staffing plan shift to shift for each patient care unit to provide staffing flexibility to meet patient needs;

(iii) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources;

(iv) include how on-call time will be used;

(v) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

(vi) include a mechanism for evaluating the effectiveness of the official nurse services staffing plan based on patient needs, nursing-sensitive quality indicators, nurse satisfaction measures

collected by the hospital, and evidence-based [evidenece based] nurse staffing standards; and

(vii) be used by the hospital as a component in setting the nurse staffing budget and guiding the hospital in assigning nurses hospital wide.

(C) The hospital shall make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

(3) The hospital shall annually report to HHSC [the department] on:

(A) whether the hospital's governing body has adopted a nurse staffing policy;

(B) whether the hospital has established a nurse staffing committee that meets the membership requirements of paragraph (1) of this subsection;

(C) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan and has reported the results of the evaluation to the hospital's governing body; and

(D) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(4) Mandatory overtime. The hospital shall adopt, implement and enforce policies on use of mandatory overtime.

(A) As used in this subsection:

(i) "on-call time" means time spent by a nurse who is not working but who is compensated for availability; and

(ii) "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. Mandatory overtime does not include prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety.

(B) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(C) This section does not prohibit a nurse from volunteering to work overtime.

(D) A hospital may not use on-call time as a substitute for mandatory overtime.

(E) The prohibitions on mandatory overtime do not apply if:

(i) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(ii) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(iii) there is an emergency or unforeseen event of a kind that:

(I) does not regularly occur

(II) increases the need for health care personnel at the hospital to provide safe patient care; and

(III) could not prudently be anticipated by the hospital; or

(iv) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient. The nurse staffing committee shall ensure that scheduling a nurse for a procedure that could be anticipated to require the nurse to stay beyond the end of his or her scheduled shift does not constitute mandatory overtime.

(F) If a hospital determines that an exception exists under subparagraph (E) of this paragraph, the hospital shall, to the extent possible, make and document a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

(G) A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

(k) Outpatient services. If the facility provides outpatient services within the facility, written policies and procedures describing the operation of the services shall be adopted, implemented and enforced.

(l) Pharmacy services. The facility shall provide pharmaceutical services that meet the needs of the patients.

(1) License. A facility that stores and dispenses prescription drugs for administration to a patient by a person authorized by law to administer the drug, shall be licensed, as required, by the Texas State Board of Pharmacy.

(2) Organization. The facility shall have a pharmacy directed by a licensed pharmacist.

(3) Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the facility's organized pharmaceutical services.

(4) Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

(A) Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

(B) The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

(i) The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

(ii) Employees shall provide pharmaceutical services within the scope of their license and education.

(C) Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

(D) Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

(E) There shall be adequate controls over all drugs and medications including floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

(F) Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

(G) There shall be a drug recall procedure.

(H) A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(i) Direction of pharmaceutical services may not require on premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

(ii) A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

(i) There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

(ii) Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

(iii) The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

(A) All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

(B) Drugs and biologicals shall be kept in a locked storage area.

(i) A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

(ii) Dangerous drugs as well as controlled substances shall be secure from unauthorized use.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

(i) There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

(ii) Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

(i) Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

(ii) A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

(iii) A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the facility-wide quality assurance program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate.

(H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(i) A pharmacist shall be readily available by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

(ii) There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(m) Quality assurance. The governing body shall ensure that there is an effective, ongoing, facility-wide, data-driven quality assurance (QA) program to evaluate the provision of patient care.

(1) Implementation plan. The facility-wide QA program shall be on-going and have a written plan of implementation.

(A) All organized services related to patient care, including services furnished by contract, shall be evaluated.

(B) Nosocomial infections and medication therapy shall be evaluated.

(C) All medical services performed in the facility shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(2) Implementation. The facility shall take and document appropriate remedial action to address deficiencies found through the QA program. The facility shall document the outcome of the remedial action.

(3) Discharge planning. The facility shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from facility. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Texas Health and Human Services Commission [Department of Aging and Disability Services (DADS)] set forth in Chapter 303 of this title [40 TAC Chapter 17] (relating to Preadmission Screening and Resident Review (PASRR)),

all patients who are being considered for discharge from the facility to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the facility and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code, §533.035, to conduct prior to facility discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(n) Radiology services. When radiology services are provided, written policies and procedures shall be adopted, implemented and enforced which describe the radiology services provided in the facility and how employee and patient safety will be maintained.

(1) Proper safety precautions shall be maintained against radiation hazards. This includes adequate shielding for patients, personnel, and facilities.

(2) Inspection of equipment shall be made periodically. Defective equipment shall be promptly repaired or replaced.

(3) Radiation workers shall be checked, by the use of exposure meters or badge tests, for amount of radiation exposure. Exposure reports and documentation shall be available for review.

(4) Radiology services shall be provided only on the order of individuals with privileges granted by the medical staff and of other physicians or practitioners authorized by the medical staff and governing body to order such services.

(5) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(6) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(o) Respiratory care services. When respiratory care services are provided, written policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the facility. Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(p) Waste and waste disposal.

(1) Special waste and liquid/sewage waste management.

(A) The hospital shall comply with the requirements set forth by HHSC [the department] in §§1.131 - 1.137 of Title 25 [this title] (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities) and the Texas Commission on Environmental Quality (TCEQ) requirements in 30 TAC Chapter 326 [~~§§330.1207~~] (relating to [~~Generators of~~] Medical Waste Management).

(B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(2) Waste receptacles.

(A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location(s) into closed containers.

(B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(D) Non-reusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

§510.43. Patient Transfer Policy.

(a) Definitions.

(1) For purposes of this section, a transferring facility is a private psychiatric hospital licensed under Health and Safety Code (HSC), Chapter 577.

(2) For purposes of this section, a receiving facility is one of the following:

(A) a private psychiatric hospital licensed under HSC, Chapter 577;

(B) a general or special hospital licensed under HSC, Chapter 241;

(C) a hospital operated by HHSC [the Texas Department of Mental Health and Mental Retardation];

(D) a hospital operated by a federal agency; or

(E) a chemical dependency treatment facility licensed under HSC, Chapter 464.

(3) For purposes of this section, patient is defined as an individual:

(A) seeking treatment who may or may not be under the immediate supervision of a personal attending physician, and who, within reasonable medical probability, requires immediate or continuing services and medical care; or

(B) admitted as a patient.

(b) Applicability.

(1) If a transferring facility or a receiving facility is licensed under HSC, Chapter 577, it must comply with all requirements of this section.

(2) Receiving facilities, other than those licensed under HSC, Chapter 577, are not governed by these rules.

(c) General.

(1) The governing body of each transferring facility shall adopt, implement, and enforce a policy relating to patient transfers that is consistent with this section and contains each of the requirements in subsection (d) of this section. Facility administration has the authority to represent a facility during the transfer from or receipt of patients into the facility.

(2) The transfer policy shall be adopted by the governing body of the facility after consultation with the medical staff.

(3) The policy shall govern transfers not covered by a transfer agreement in accordance with §510.61 of this chapter [~~§134.61 of this title~~] (relating to Patient Transfer Agreements).

(4) The movement of a stable patient from a transferring facility to a receiving facility is not considered to be a transfer under this section if it is the understanding and intent of both facilities that the patient is going to the receiving facility only for tests, the patient will not remain overnight at the receiving facility, and the patient will return to the transferring facility. This paragraph applies only when a patient remains stable during transport to and from the facilities and during testing.

(5) The policy shall include a written operational plan to provide for patient transfer transportation services if the transferring facility does not provide its own patient transfer transportation services.

(6) Each governing body, after consultation with the medical staff, may implement its transfer policy by adopting transfer agreements with other receiving facilities in accordance with §510.61 of this chapter [~~§134.61 of this title~~].

(d) Requirements for transfer of patients between facilities.

(1) Discrimination. Except as is specifically provided in paragraphs (5)(E) and (F) and (6)(A) and (B) of this subsection, relating, respectively, to mandated providers and designated providers, the policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(2) Disclosure. The policy shall recognize the right of an individual to request transfer into the care of a physician and a receiving facility of his own choosing; however, if a patient is transferred for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or transferring facility administration regarding the availability of medical care and services at a reduced cost or no cost to the patient, the physician or facility administration shall fully disclose to the patient the eligibility requirements established by the patient's chosen physician or receiving facility.

(3) Patient evaluation. The policy shall provide that each patient who arrives at a transferring facility is evaluated in accordance with §568.41 of this title (relating to Responding to an Emergency Medical Condition) [~~the Texas Department of Mental Health and Mental Retardation §411.468 of this title (relating to Responding to an Emergency Medical Condition of a Patient, Prospective Patient, or Individual who Arrives on Hospital Property Requesting Examination or Treatment)~~].

(A) After receiving a report on the patient's condition from the nursing staff by telephone or radio, if the physician on call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on call may order the transfer by telephone or radio.

(B) Physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the staff member receiving the order, and countersigned by the physician authorizing the transfer as soon as possible. The patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to paragraph (8) of this subsection.

(4) Facility personnel, written protocols, standing delegation orders, eligibility and payment information. The policy of the transferring facility and receiving facility shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers and to provide accurate information regarding eligibility and payment practices. The policy shall provide that written protocols or standing delegation orders are in place to guide personnel when a patient requires transfer.

(5) Transfer of patients who have emergency medical conditions.

(A) If a patient has an emergency medical condition which has not been stabilized or when stabilization of the patient's vital signs is not possible because the transferring facility does not have the appropriate equipment or personnel to correct the underlying process, evaluation and treatment shall be performed and transfer shall be carried out as quickly as possible.

(B) The policy shall provide that the transferring facility may not transfer a patient with an emergency medical condition which has not been stabilized unless:

(i) the patient or a legally responsible person acting on the patient's behalf, after being informed of the transferring facility's obligations under this section and of the risks and benefits of transfer, requests transfer in writing;

(ii) a physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at a receiving facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(iii) if the physician who made the determination to transfer a patient with an emergency condition is not physically present at the time of transfer, a qualified medical person, as designated by facility policy, may sign a certification described in clause (ii) of this subparagraph after consultation with the physician. The physician shall countersign the physician certification within a reasonable period of time.

(C) Except as provided by subparagraphs (E) and (F) of this paragraph and paragraph (6)(A) and (B) of this subsection, the policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only.

(D) Except as expressly permitted in clauses (i) and (ii) of this subparagraph, the policy shall provide for the receipt of patients who have an emergency medical condition so that upon notification of and prior to a transfer, the receiving facility shall, after determining whether or not space, personnel and services necessary to provide appropriate care for the patient are available, respond to the transferring facility, within 30 minutes, either accepting or refusing the transfer. The 30-minute time period begins at the time a member of the staff of the receiving facility receives the call initiating the request to transfer.

(i) The policy may permit response within a period of time in excess of 30 minutes but no longer than one hour if there

are extenuating circumstances for the delay. If the transfer is accepted, the reason for the delay shall be documented on the memorandum of transfer.

(ii) The response time may be extended before the expiration of the initial 30 minutes period by agreement among the parties to the transfer. If the transfer is accepted, the agreed extension shall be documented in the memorandum of transfer.

(E) The policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, HSC, §§61.030-61.032 and §§61.057-61.059 (relating to Mandated Providers) since those requirements may apply to a patient.

(F) The policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(G) The policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

(i) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring facility;

(ii) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(iii) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at a receiving facility.

(H) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(I) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized health care entity.

(6) Transfer of patients who do not have emergency medical conditions.

(A) The policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, HSC, §§61.030-61.032 and §§61.057-61.059 (relating to Mandated Providers) as those requirements may apply to a patient.

(B) The policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(C) The policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

(i) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring facility;

(ii) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(iii) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at a receiving facility.

(D) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(E) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized health care entity.

(F) The policy shall recognize the right of an individual to request a transfer into the care of a physician and a receiving facility of the individual's own choosing.

(7) Physician's duties and standard of care.

(A) The policy shall provide that the transferring physician shall determine and order life support measures which are medically appropriate to stabilize the patient prior to transfer and to sustain the patient during transfer.

(B) The policy shall provide that the transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

(C) The policy shall provide that in determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

(D) The policy shall provide that except as allowed under paragraph (3)(B) of this subsection, prior to each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used.

(E) The policy shall provide that prior to transfer, the transferring physician shall secure a receiving physician and a receiving facility that are appropriate to the medical needs of the patient and that will accept responsibility for the patient's medical treatment and care.

(8) Record review for standard of care. The policy shall provide that the medical staff review appropriate records of patients transferred to determine that the appropriate standard of care has been met.

(9) Medical record.

(A) The policy shall provide that a copy of those portions of the patient's medical record which are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving facility with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records shall be forwarded to the receiving physician and receiving facility as soon as possible.

(B) The medical record shall contain at a minimum:

(i) a brief description of the patient's medical history and physical examination;

(ii) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

(iv) the results of all diagnostic tests, such as laboratory tests;

(v) pertinent X-ray films and reports; and

(vi) any other pertinent information.

(10) Memorandum of transfer.

(A) The policy shall provide that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the following information:

(i) the patient's full name, if known;

(ii) the patient's race, religion, national origin, age, sex, physical handicap, if known;

(iii) the patient's address and next of kin, address, and phone number if known;

(iv) the names, telephone numbers and addresses of the transferring and receiving physicians;

(v) the names, addresses, and telephone numbers of the transferring and receiving facilities;

(vi) the time and date on which the patient first presented or was presented to the transferring physician and transferring facility;

(vii) the time and date on which the transferring physician secured a receiving physician;

(viii) the name, date, and time administration was contacted in the receiving facility;

(ix) signature, time, and title of the transferring facility administration who contacted the receiving facility;

(x) the certification required by paragraph (5)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

(xi) the time and date on which the receiving physician assumed responsibility for the patient;

(xii) the time and date on which the patient arrived at the receiving facility;

(xiii) signature and date of receiving administration;

(xiv) type of vehicle and company used;

(xv) type of equipment and personnel needed in transfers;

(xvi) name and city of facility to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring facility.

(C) A copy of the memorandum of transfer shall be retained by the transferring and receiving facilities. The memorandum shall be filed separately from the patient's medical record and in a manner that facilitates [which will facilitate] its inspection by HHSC [the department]. All memorandum of transfer forms filed separately shall be retained for five years.

(e) Violations. A facility violates HSC, Chapter 577 and this section if:

(1) the facility fails to comply with the requirements of this section; or

(2) the governing body fails or refuses to:

(A) adopt a transfer policy which is consistent with this section and contains each of the requirements in subsection (d) of this section;

(B) adopt a memorandum of transfer form which meets the minimum requirements for content contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

§510.46. *Abuse and Neglect Issues.*

(a) Reporting. Incidents of abuse, neglect, exploitation, or illegal, unethical or unprofessional conduct shall be reported to HHSC [the department] as provided in subsections (b) and (c).

(b) Abuse or neglect of a child, and abuse, neglect or exploitation of an elderly or disabled person. The following definitions apply only to this subsection.

(1) Abuse or neglect of a child, as defined in 25 Texas Administrative Code (TAC), §1.204(a) and (b) (relating to Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons).

(2) Abuse, neglect or exploitation of an elderly or disabled person, as defined in §1.204(a) - (c) [§1.204(a) and (b)] of Title 25 [this title].

(c) Abuse and neglect of individuals with mental illness, and illegal, unethical, and unprofessional conduct. The requirements of this subsection are in addition to the requirements of subsection (b) of this section.

(1) Definitions. The following definitions are in accordance with Health and Safety Code (HSC), §161.131 and apply only to this subsection:

(A) Abuse.

(i) Abuse (as the term is defined in 42 United States Code (USC), §10801 et seq.) is any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an [a] individual with mental illness, and includes acts such as:

(I) the rape or sexual assault of an [a] individual with mental illness;

(II) the striking of an [a] individual with mental illness;

(III) the use of excessive force when placing an [a] individual with mental illness in bodily restraints; and

(IV) the use of bodily or chemical restraints on a individual with mental illness which is not in compliance with federal and state laws and regulations.

(ii) In accordance with HSC, §161.132(j), abuse also includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy or treatment.

(B) Illegal conduct--Illegal conduct (as the term is defined in HSC, §161.131(4)) is conduct prohibited by law.

(C) Neglect--Neglect (as the term is defined in 42 USC, §10801 et seq.) is a negligent act or omission by any individual re-

sponsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an [a] individual with mental illness or which placed an [a] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for an [a] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to an [a] individual with mental illness, or the failure to provide a safe environment for an [a] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(D) Unethical conduct--Unethical conduct (as the term is defined in HSC, §161.131(11)) is conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(E) Unprofessional conduct--Unprofessional conduct (as the term is defined in HSC, §161.131(12)) is conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(2) Posting requirements. A facility shall prominently and conspicuously post for display in a public area that is readily visible to patients, residents, volunteers, employees, and visitors a statement of the duty to report abuse and neglect, or illegal, unethical or unprofessional conduct in accordance with HSC, §161.132(e). The statement shall be in English and in a second language appropriate to the demographic makeup of the community served and contain the number of HHSC's Complaint and Incident Intake Unit [the department's patient information and complaint line at (888) 973-0022].

(3) Reporting responsibility.

(A) Reporting abuse and neglect. A person, including an employee, volunteer, or other person associated with the facility who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient of the facility who is receiving mental health or chemical dependency services has been, is, or will be adversely affected by abuse or neglect (as those terms are defined in this subsection) by any person shall as soon as possible, but within 24 hours, report the information supporting the belief to HHSC [the department] or to the appropriate state health care regulatory agency in accordance with HSC, §161.132(a).

(B) Reporting illegal, unprofessional, or unethical conduct. An employee of or other person associated with a facility including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee or health care professional associated with the facility, has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health or chemical dependency services provided in the facility shall as soon as possible, but within 24 - 48 hours, report the information supporting the belief to HHSC [the department] or to the appropriate state health care regulatory agency in accordance with HSC, §161.132(b).

(4) Training requirements. A facility providing mental health or substance use services shall comply with §568.121 of this title (relating to Staff Member Training) [the memorandum of understanding (MOU) adopted by the Texas Commission on Alcohol and Drug Abuse in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct)]. The training requirements apply [MOU applies] to all employees and associated health care professionals who are assigned to or who provide services in the facility.

(d) Investigations. A complaint under this subsection will be investigated or referred by HHSC [the department] as follows.

(1) Allegations under subsection (b) of this section will be investigated in accordance with [TAC] §1.205 of Title 25 [this title] (relating to Reports and Investigations [of Children or Elderly or Disabled Persons]) and [TAC] §1.206 of Title 25 [this title] (relating to Completion of Investigation).

(2) Allegations under subsection (c) of this section will be investigated in accordance with §10.82 of this chapter (relating to Inspections) [§134.81 of this title (relating to Survey and Investigation Procedures)]. Allegations concerning a health care professional's failure to report abuse and neglect or illegal, unprofessional, or unethical conduct will not be investigated by HHSC [the department] but will be referred to the individual's licensing board for appropriate disciplinary action.

(3) Allegations under both subsections (b) and (c) will be investigated in accordance with §1.205 and §1.206 [TAC §§1.205 and 1.206] of Title 25 [this title] except as noted in paragraph (2) of this subsection concerning a health care professional's failure to report.

(e) Submission of complaints. A complaint made under this section shall [may] be submitted in writing or verbally to HHSC [the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (888) 973-0022].

(f) Notification.

(1) For complaints under subsection (b) of this section, HHSC [the department] shall provide notification according to the following:

(A) HHSC [The department] shall notify the reporter, if known, in writing of the outcome of the complete investigation.

(B) HHSC [The department] shall notify the alleged victim, and his or her parent or guardian if a minor, in writing of the outcome of the completed investigation.

(2) For complaints under subsection (c) of this section, HHSC [the department] shall inform, in writing, the complainant who identifies themselves by name and address of the following:

(A) the receipt of the complaint;

(B) if the complainant's allegations are potential violations of this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC [the department];

(D) whether and to whom the complaint will be referred; and

(E) the findings of the complaint investigation.

(g) HHSC [Department] reporting and referral.

(1) Reporting health care professional to licensing board.

(A) In cases of abuse, neglect, or exploitation, as those terms are defined in subsection (b), by a licensed, certified, or registered health care professional, HHSC [the department] may forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients or clients of the facility must be blacked out or deidentified.

(B) A health care professional who fails to report abuse and neglect or illegal, unprofessional, or unethical conduct as required

by subsection (c)(3) of this section may be referred by HHSC [the department] to the individual's licensing board for appropriate disciplinary action.

(2) Abusive treatment methods. HHSC [The department] shall report or forward a copy of a complaint concerning an abusive treatment method to the local mental health authority [Texas Department of Mental Health and Mental Retardation].

(3) Sexual exploitation reporting requirements. In addition to the reporting requirements described in subsection (c)(3) of this section, a mental health services provider must report suspected sexual exploitation in accordance with Texas Civil Practice and Remedies Code, §81.006.

(4) Referral follow-up. HHSC [The department] shall request a report from each referral agency of the action taken by the agency six months after the referral.

(5) Referral of complaints. A complaint containing allegations which are not a violation of HSC, Chapters 571 or 577 or this chapter will not be investigated by HHSC [the department] but shall be referred to law enforcement agencies or other agencies, as appropriate.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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



SUBCHAPTER D. VOLUNTARY AGREEMENTS

26 TAC §510.61, §510.62

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.61. Patient Transfer Agreements.

(a) General provisions.

(1) Transfer agreements between transferring facilities and receiving facilities as those terms are defined in §510.43 of this chapter [§134.43 of this title] (relating to Patient Transfer Policy) are voluntary.

(2) If transfer agreements are executed that are consistent with the requirements of subsection (b) of this section, any patient transfers shall be governed by the agreement. The memorandum of transfer described in §510.43(d)(10) of this chapter [§134.43(d)(10) of this title] is not required for transfers governed by an agreement.

(3) Multiple transfer agreements may be entered into based upon the type or level of medical services available at other facilities.

(b) Rules for patient transfer agreements.

(1) A patient transfer agreement shall contain the following.

(A) Except as specifically provided in paragraph (4) of this subsection, relating to mandated providers, the transfer of a patient shall not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(B) The transfer or receipt of patients in need of emergency care shall not be based upon the individual's inability to pay for the services rendered.

(2) The patient transfer agreement shall require that patient transfers be accomplished in a medically appropriate manner by determining the availability of appropriate facilities, services, and staff for providing care to the patient and by providing:

(A) medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(B) appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer; and

(C) all necessary records for continuing the care for the patient.

(3) The facility shall recognize the right of an individual to request transfer into the care of a physician and facility of the individual's own choosing.

(4) The facility shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Health and Safety Code, Chapter 61 (relating to the Transfer of Patients to Mandated Providers).

(5) The patient transfer agreement shall provide that a patient with an emergency medical condition which has not been stabilized shall not be transferred unless the following occurs.

(A) The patient, or a legally responsible person acting on the patient's behalf, after being informed of the facility's obligations under this section and of the risk of transfer, has requested transfer to another facility in writing.

(B) A physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer.

(C) If a physician is not physically present at the time a patient is transferred, a qualified medical person has signed a certification described in subparagraph (B) of this paragraph after consultation with a physician who has made the determination described in subparagraph (B) of this paragraph and who will subsequently countersign the certification within a reasonable period of time.

§510.62. Cooperative Agreements.

(a) A cooperative agreement is an agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services, and may be established in accordance with Health and Safety Code (HSC), Chapter 314.

(b) For purposes of this section only, a hospital is a private psychiatric [mental] hospital licensed under HSC, Chapter 577, or a general or special hospital licensed under HSC, Chapter 241.

(c) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreements. Acting through their boards of directors, a group of hospitals may conduct discussions or negotiations concerning cooperative agreements, provided that the discussions or negotiations do not involve price fixing or predatory pricing.

(d) Parties to a cooperative agreement may apply to HHSC [the department] for a certification of public advantage governing the cooperative agreement. The application must include the application fee in accordance with §510.26(e) of this chapter [§134.26(e) of this title] (relating to Fees), and a written copy of the cooperative agreement that describes the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the attorney general and to HHSC [the department] at the same time.

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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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §510.81, concerning Survey and Investigation Procedures; §510.82, concerning Complaint Against a Texas Department of Health Representative; and §510.83, concerning Enforcement; and new §§510.81, concerning Integrity of Inspections and Investigations; 510.82, concerning Inspections; 510.83, concerning Complaint Investigations; 510.84, concerning Notice; 510.85, concerning Professional Conduct, 510.86, concerning Complaint Against an HHSC Representative; and 510.87, concerning Enforcement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspections and complaint investigations procedures for private psychiatric hospitals and crisis stabilization units (PPHCSUs). These procedures require updating in order to hold facilities accountable during the survey and investigation processes and ensure that necessary documentation is provided in a timely manner to HHSC surveyors. The proposal revises enforcement procedures to ensure accuracy and conform to statute. In addition, these updates ensure consistent practices across all Health Care Regulation (HCR) rulesets.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§510.81 - 510.83 deletes this content as no longer necessary. These procedures are being updated and new content will be provided in proposed new §§510.81 - 510.87.

Proposed new §510.81, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

Proposed new §510.82, Inspections, makes necessary updates to requirements for inspections of PPHCSUs.

Proposed new §510.83, Complaint Investigations, makes necessary updates to requirements for investigations of PPHCSUs following a complaint.

Proposed new §510.84, Notice, informs providers of the required timeframes regarding responding to deficiencies, Plans of Correction (POC), and the provision of additional evidence.

Proposed new §510.85, Professional Conduct, notifies providers that enforcement actions are reported to appropriate licensing authorities.

Proposed new §510.86, Complaint Against an HHSC Representative, informs providers about registering a complaint against an HHSC inspector or investigator.

Proposed new §510.87, Enforcement, creates consistency between this ruleset and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural

communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of health care facilities. Patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

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 the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HCR_PRT@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R012" in the subject line.

SUBCHAPTER E. ENFORCEMENT

26 TAC §§510.81 - 510.83

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 571 through 578.

§510.81. *Survey and Investigation Procedures.*

§510.82. *Complaint Against a Texas Department of Health Representative.*

§510.83. *Enforcement.*

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

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SUBCHAPTER E. ENFORCEMENT

26 TAC §§510.81 - 510.87

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 571 through 578.

§510.81. *Integrity of Inspections and Investigations.*

(a) In order to preserve the integrity of HHSC's inspection and investigation process, a facility:

(1) shall not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients; or

(2) shall not record, listen to, or eavesdrop on any internal discussion by or among HHSC staff unless it first informs HHSC staff that it will do so and obtains HHSC's written approval before beginning to record, listen to, or eavesdrop on the discussion.

(b) This section does not prohibit an individual from recording an HHSC interview with the individual.

§510.82. *Inspections.*

(a) The Texas Health and Human Services Commission (HHSC) may conduct a routine survey of a facility prior to the issuance or renewal of a license.

(1) A hospital is not subject to routine surveys subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq; or

(B) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(2) HHSC may conduct a routine survey of a hospital exempt from an annual licensing survey under paragraph (1) of this subsection before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site survey of the hospital in the preceding three years and HHSC determines that a survey of the hospital by the certification or accreditation body is not scheduled within 60 days.

(b) HHSC may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with:

(1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order of the commissioner or the commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(d) HHSC inspections to evaluate a facility's compliance may include:

(1) Initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) Inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) Routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) Follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) Inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) Entry in conjunction with any other federal, state, or local agency's entry.

(e) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(f) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC.

(g) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, HHSC holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection. The facility may provide any final documentation regarding compliance during the exit conference.

(k) Release of information by HHSC.

(1) All information and materials obtained or compiled by HHSC in connection with a complaint and investigation concerning a facility licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(A) persons involved with HHSC in the enforcement action against the facility;

(B) the facility that is the subject of the enforcement action, or the facility's authorized representative;

(C) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental facility services;

(D) law enforcement agencies; and

(E) persons engaged in bona fide research, if all individual-identifying information and information identifying the facility has been deleted.

(2) The following information is subject to disclosure in accordance with Government Code Chapter 552 (the Texas Public Information Act):

(A) a notice of alleged violation against the facility, which notice shall include the provisions of law which the facility is alleged to have violated, and the nature of the alleged violation;

(B) the pleadings in the administrative proceeding;

(C) final decision or order by HHSC; and

(D) any other information required by law to be disclosed under public information request laws.

(l) Reinspection.

(1) Reinspections may be conducted by HHSC if a facility applies for the reissuance of its license after the suspension or revocation of the facility's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the facility for violations of HSC Chapter 577, this chapter, a special license condition, or an order of the commissioner.

(2) A reinspection may be conducted to ascertain compliance with either health or construction requirements or both.

§510.83. Complaint Investigations.

(a) A facility shall provide each client and applicable consent at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this information in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) Complaints outside HHSC's jurisdiction may be referred to an appropriate agency, as applicable.

(d) Investigations to evaluate a facility's compliance shall be conducted following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations are coordinated with the federal Centers for Medicare and Medicaid Services and its agents responsible for the survey of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act, (42 USC, §1395 et seq), so as to avoid duplicate investigations.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the commissioner or the commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients. Members of the governing body and personnel shall provide a written statement upon request from HHSC within 48 hours after HHSC makes the request.

(i) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§510.84. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When deficiencies are found:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days of the exit conference via U.S. mail or email.

(2) Within 10 calendar days of the facility's receipt of the SOD, the facility shall return a written Plan of Correction (POC) to HHSC that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If the POC is not accepted by HHSC, HHSC notifies the facility in writing no later than 10 business days after notification and requests a modified POC and any additional evidence.

(C) The facility shall correct the identified deficiencies and submit evidence to HHSC verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§510.85. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports in writing to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§510.86. Complaint Against an HHSC Representative.

(a) A hospital may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter.

(b) A complaint against an HHSC representative shall be registered with the HHSC Health Facility Compliance Manager.

§510.87. Enforcement.

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with statutes, rules, and orders applicable to them.

(1) Denial, suspension or revocation of a license. HHSC has jurisdiction to enforce violations of the Acts or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for the following reasons:

(A) failure to comply with any applicable provision of the Health and Safety Code (HSC), including Chapters 571 through 578;

(B) failure to comply with any provision of this chapter or any other applicable laws;

(C) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the facility, or any of its employees, materially alters any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide an adequate licensure application or renewal information;

(G) failure to comply with an order of the commissioner or another enforcement procedure under HSC Chapters 571 through 578;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the facility, or any of its employees, has aided, committed, abetted, or permitted the commission of an illegal act;

(J) the facility, or any of its employees, commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapters 571 through 578 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

(N) failure to comply with applicable requirements within a designated probation period;

(O) if the facility is participating under Title XVIII, and the Centers for Medicare and Medicaid Services terminates the facility's Medicare provider agreement; or

(P) discloses any of the following actions against or by the applicant, or the licensee, or against or by affiliates, or managers of the applicant or the licensee within the two-year period preceding the application:

(i) operation of a facility that has been decertified or had its contract cancelled under the Medicare or Medicaid program in any state;

(ii) federal Medicare or state Medicaid sanctions or penalties;

(iii) federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved state Medicaid or federal Medicare audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(2) Order for immediate license suspension. HHSC may suspend a license for 10 days pending a hearing if after an investigation HHSC finds that there is an immediate threat to the health or safety of the patients or employees of a licensed facility. HHSC may issue necessary orders for the patients' welfare.

(3) Probation. In lieu of denying, suspending, or revoking the license, HHSC may place the facility on probation for a period of not less than 30 days, if the facility is found in repeated non-compli-

ance and the facility's noncompliance does not endanger the health and safety of the public. HHSC shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to HHSC for approval.

(4) Administrative penalty. HHSC has jurisdiction to impose an administrative penalty against a person licensed or regulated under this chapter for violations of applicable chapters of the HSC or this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of HSC §571.025.

(5) Licensure of persons with criminal backgrounds. HHSC may deny a person a license or suspend or revoke an existing license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC shall apply the requirements of Occupations Code Chapter 53.

(A) HHSC is entitled under Government Code Chapter 411 to obtain criminal history information maintained by the Texas Department of Public Safety, the Federal Bureau of Investigation, or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC shall consider the provisions of Occupations Code Chapter 53.

(C) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

- (i) a misdemeanor violation of HSC Chapter 571;
- (ii) a misdemeanor or felony involving moral turpitude;
- (iii) a misdemeanor or felony relating to deceptive business practices;
- (iv) a misdemeanor or felony of practicing any health-related profession without a required license;
- (v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;
- (vi) a misdemeanor or felony under the Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency or a health care professional; or
- (vii) a misdemeanor or felony under the TPC:
 - (I) Title 4 - offenses of attempting or conspiring to commit any of the offenses in this clause;
 - (II) Title 5 - offenses against the person;
 - (III) Title 7 - offenses against property;
 - (IV) Title 8 - offenses against public administration;
 - (V) Title 9 - offenses against public order and decency;
 - (VI) Title 10 - offenses against public health, safety or morals; or
 - (VII) Title 11 - offenses involving organized crime.

(6) Offenses listed in paragraph (5)(C) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions which indicate an inability or tendency for the person to be unable to own or operate a facility.

(7) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(8) Notice. If HHSC proposes to deny, suspend or revoke a license, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action.

(9) Acceptance. Within 20 days after receipt of the notice, the applicant or license holder may notify HHSC, in writing, of acceptance of HHSC's determination.

(10) Hearing request.

(A) A request for a hearing by the applicant or license holder shall be in writing and submitted to HHSC within 20 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the third day after the notice is mailed by HHSC to the last known address of the applicant or license holder.

(B) A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §§1.21, 1.23, 1.25, and 1.27 of Title 25, Texas Administrative Code (relating to Formal Hearing Procedures).

(11) No response to notice. If the applicant or license holder fails to timely respond to the notice or does not request a hearing in writing within 30 days after proper notice, the person is deemed to have waived the opportunity for a hearing as outlined in the notice and the proposed action shall be taken by default.

(12) Notification of HHSC's decision. HHSC shall send the license holder or applicant a copy of HHSC's decision for denial, suspension or revocation of license by certified mail, which shall include the findings and conclusions on which HHSC based its decision.

(13) Admission of new patients upon suspension or revocation. Upon HHSC's determination to suspend or revoke a license, the license holder may not admit new patients until the license is reissued.

(14) Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC within 30 days of HHSC's notification.

(15) Reapplication following denial or revocation.

(A) One year after HHSC's decision to deny or revoke, or the voluntary surrender of a license by a facility while enforcement action is pending, a facility may petition HHSC, in writing, for a license. Expiration of a license prior to HHSC's decision becoming final shall not affect the one-year waiting period required before a petition can be submitted.

(B) HHSC may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC may deny reapplication for licensure if HHSC determines that:

- (i) the reasons for the original action continues;
- (ii) the petitioner has failed to offer sufficient proof;

or

(iii) the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §510.22 of this title (relating to Application and Issuance of Initial License).

(16) Expiration of a license during suspension. A facility whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(17) Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a facility license shall not deprive HHSC of jurisdiction in regard to enforcement against the facility.

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 June 30, 2021.

TRD-202102525

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 8, 2021

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.55

The Texas Board of Criminal Justice (board) proposes amendments to §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property. The amendments are proposed in conjunction with a proposed rule review of §151.55 as published in another section of the *Texas Register*. The proposed amendments are minor word changes, clarifications, and organizational changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed

amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §497.113, which authorizes the sale or disposal of surplus agricultural products and personal property owned by the department.

Cross Reference to Statutes: None.

§151.55. *Disposal of Surplus Agricultural Goods and Agricultural Personal Property.*

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ) that surplus agricultural goods produced by the Texas Department of Criminal Justice (TDCJ) and surplus agricultural personal property used in the TDCJ's agricultural operations be disposed in the most efficient manner possible for the goods or personal property being disposed.

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

(1) Surplus agricultural goods are those agricultural commodities grown, produced, purchased, or acquired by the TDCJ for use within the TDCJ or other state or local agency or non-profit organization, which:

(A) exceed the needs of [the] TDCJ operations; [; which]

(B) are not required for the TDCJ's [its] foreseeable needs; [;] and [which]

(C) have been determined to be surplus by the TDCJ chief financial officer in coordination with the Manufacturing, Agribusiness and Logistics Division [TDCJ] director [of Agribusiness, Land and Minerals].

(2) Surplus agricultural personal property is personal property related to the agricultural operations of the TDCJ and grown, produced, purchased, or acquired by the TDCJ, including livestock and farming equipment and implements, which:

(A) exceeds the needs of [the] TDCJ operations; [; which]

(B) is not required for the TDCJ's [its] foreseeable needs; [;] and [which]

(C) has been determined to be surplus by the chief financial officer in coordination with the Manufacturing, Agribusiness and Logistics Division director [~~of Agribusiness, Land and Minerals~~].

(c) Procedures.

(1) The TBCJ hereby authorizes the chief financial officer or designee to sell or dispose of surplus agricultural goods and surplus agricultural personal property. Sale or disposal shall be accomplished in such a manner so as to provide, if possible, reasonable consideration for the sale or disposal of such surplus items.

(2) When items of agricultural goods or agricultural personal property are considered surplus, the Manufacturing, Agribusiness and Logistics Division director [~~of Agribusiness, Land and Minerals~~] shall provide a written report to the chief financial officer setting forth those items of agricultural goods and agricultural personal property considered to be surplus. In those instances requiring immediate action due to the perishable nature of such items, the report may be transmitted via email. The chief financial officer shall review the report and determine if such items shall be sold or disposed as surplus agricultural goods or personal property.

(3) The chief financial officer shall review the report submitted as required herein and shall determine if such reported items are surplus to the needs of the TDCJ, and the terms and method of sale or disposal of such items. Sale or disposal of surplus agricultural goods or agricultural personal property includes:

- (A) sale in the usual market for such items;
- (B) direct sale by bid or negotiated sale;

(C) exchange for other agricultural products and finished goods; and

(D) donation of food commodities to state, local, or non-profit organizations.

(4) Proceeds from the sale of surplus agricultural goods and surplus agricultural personal property shall be deposited in the appropriate TDCJ fund to be used for purchase of agricultural goods and agricultural personal property necessary for the operation of the TDCJ.

(5) Prices of sales shall be at prevailing market prices or better.

(6) After TDCJ staff takes action on the disposition of surplus agricultural goods and agricultural personal property, a report detailing the actions shall be submitted for inclusion in the materials provided to the TBCJ at each meeting.

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 June 28, 2021.

TRD-202102471

Kristen Worman

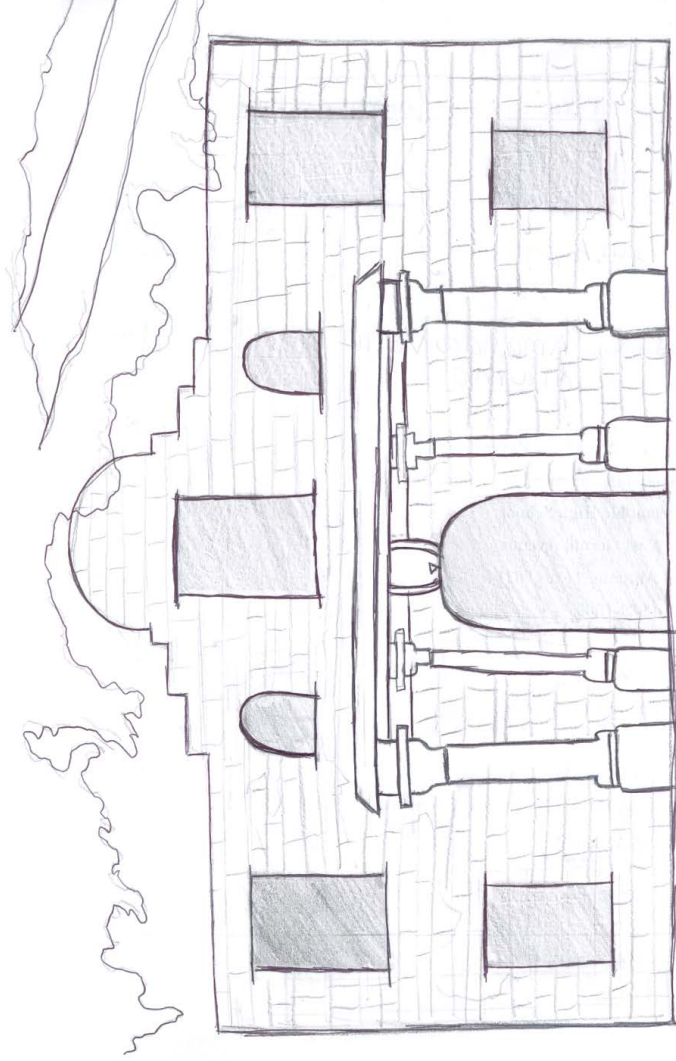
General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 8, 2021

For further information, please call: (936) 437-6700





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.23 - 18.26

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 18, concerning General Rules Concerning Reports. Specifically, the Commission adopts amendments to §18.23, regarding Administrative Waiver of Statutory Civil Penalties, §18.24, regarding General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties, §18.25, regarding Administrative Waiver or Reduction of Certain Statutory Civil Penalties, and §18.26, regarding Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500. The amendments are adopted without changes to the proposed text as published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2529). The rules will not be republished.

Current rules concerning the administrative waiver process, which determine whether a filer is eligible for a waiver or reduction of a penalty for filing a report late, were created to afford a uniform and objective process by which all filers are adjudged against the same set of standards. The adopted amendments make some improvements to this process. The adopted revisions delete the distinction between "Type I" and "Type II" reports, instead focusing on whether a penalty is more than \$500 or not. All reports with civil penalties of \$500 or less will be addressed by §18.25. They also clarify when a waiver will result in a prior offense and when it will not.

No public comments were received on these amended rules.

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

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 June 23, 2021.

TRD-202102439

J.R. Johnson

General Counsel

Texas Ethics Commission

Effective date: July 13, 2021

Proposal publication date: April 16, 2021

For further information, please call: (512) 463-5800

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Subchapter A of Chapter 20. Specifically, the Commission adopts amendments to §20.1(11)(b), regarding Definitions. The amendments are adopted with changes to the proposed text as published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2532) to correct a minor typographical error. The rule will be republished.

The Election Code defines "political advertising" in part as any communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that "appears" in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication." Tex. Elec. Code § 251.001(16) (emphasis added).

Ethics Commission rules further define "political advertising" to address whether email communications can qualify as political advertisements. Specifically, §20.1(11)(B) states that political advertising "does not include an individual communication made by e-mail but does include mass e-mails involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth." 1 Texas Administrative Code §20.1(11)(B) (emphasis added). However, current Ethics Commission rules do not address text messages. This amendment adds text messages to §20.1(11)(B).

The adopted amendment corrects a minor typographical error in §20.1(11)(B), to add two commas in the last line.

The Commission received public comment from Andrew Cates (attached as Exhibit B), who says he appreciates the Commission's willingness to address the issue of text messages sent by political campaigns, but expresses "a concern that drawing the line between individual communications and mass communications may only serve to complicate the matter further." In short, Mr. Cates has doubts that the amendment would actually address the issue and leaves "a built-in loophole that can (and very likely will) be exploited." Mr. Cates references to a University of Texas study showing that peer-to-peer text messaging services are often utilized by individuals to send text messages on a one-on-one basis to citizens advocating for the support or defeat of a candidate or measure rather than sending the communications out to many phone numbers simultaneously.

The amendment is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The adopted amended rule affects Chapter 255 of the Election Code.

§20.1. *Definitions.*

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Campaign communication--The term does not include a communication made by e-mail.

(2) Campaign treasurer--Either the individual appointed by a candidate to be the campaign treasurer, or the individual responsible for filing campaign finance reports of a political committee under Texas law or the law of any other state.

(3) Contribution--The term does not include a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor.

(4) Corporation--The term does not include professional corporations or professional associations.

(5) Election cycle--A single election and any related primary or runoff election.

(6) Identified measure--A question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

(7) Non-political expenditure--An expenditure from political contributions that is not an officeholder expenditure or a campaign expenditure.

(8) Opposed candidate--A candidate who has an opponent whose name is to appear on the ballot. The name of a write-in candidate does not appear on the ballot.

(9) Out-of-state political committee--A political committee that makes political expenditures outside Texas and in the 12 months immediately preceding the making of a political expenditure by the committee inside Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80% or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Section 20.13 of this title (relating to Out-of-State Committees) explains the practical application of this definition.

(10) Pledge--A contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check.

(11) Political advertising:

(A) A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(i) is published in a newspaper, magazine, or other periodical in return for consideration;

(ii) is broadcast by radio or television in return for consideration;

(iii) appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication; or

(iv) appears on an Internet website.

(B) The term does not include an individual communication made by e-mail or text message but does include mass e-mails and text messages involving an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth.

(12) Political subdivision--A county, city, or school district or any other governmental entity that:

(A) embraces a geographic area with a defined boundary;

(B) exists for the purpose of discharging functions of government; and

(C) possesses authority for subordinate self-government through officers selected by it.

(13) Report--Any document required to be filed by this title, including an appointment of campaign treasurer, any type of report of contributions and expenditures, and any notice.

(14) Special pre-election report--A shorthand term for a report filed in accordance with the requirements of §§20.221, 20.333, or 20.435 of this title (relating to Special Pre-Election Report by Certain Candidates; Special Pre-Election Report by Certain Specific-Purpose Committees; Special Pre-Election Reports by Certain General-Purpose Committees) and §§254.038 and §254.039 of the Election Code (relating to Special Report Near Election by Certain Candidates and Political Committees and Special Report Near Election By Certain General-Purpose Committees).

(15) Specific-purpose committee--A political committee that does not meet the definition of general-purpose committee and that has among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

(16) Unidentified measure--A question or proposal that is intended to be submitted in an election for an expression of the voters' will and that is not yet legally required to be submitted in an election, except that the term does not include the circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. The circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will is considered to be an identified measure.

(17) Principal purpose--A group has as a principal purpose of accepting political contributions or making political expenditures, including direct campaign expenditures, when that activity is an important or a main function of the group.

(A) A group may have more than one principal purpose.

(B) A group has as a principal purpose accepting political contributions if the proportion of the political contributions to the total contributions to the group is more than 25 percent within a calendar year. A contributor intends to make a political contribution if the solicitations that prompted the contribution or the statements made by the contributor about the contribution would lead to no other reasonable conclusion than that the contribution was intended to be a political contribution.

(C) The group may maintain specific evidence of contributions related only to political contributions or only to nonpolitical contributions. For example, the group may ask the contributor to make an indication when the contribution is made that the contribution is only a nonpolitical contribution.

(D) A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses to make political expenditures within a calendar year. The following shall be included for purposes of calculating the threshold:

(i) the amount of money paid in compensation and benefits to the group's employees for work related to making political expenditures;

(ii) the amount of money spent on political expenditures; and

(iii) the amount of money attributable to the proportional share of administrative expenses related to political expenditures. The proportional share of administrative expenses is calculated by comparing the political expenditures in clause (ii) of this subparagraph with nonpolitical expenditures. (For example, if the group sends three mailings a year and each costs \$10,000, if the first two are issue based newsletters and the third is a direct advocacy sample ballot, and there were no other outside expenditures, then the proportion of the administrative expenses attributable to political expenditures would be 33%.) Administrative expenses include:

(I) fees for services to non-employees;

(II) advertising and promotion;

(III) office expenses;

(IV) information technology;

(V) occupancy;

(VI) travel expenses;

(VII) interest; and

(VIII) insurance.

(E) The group may maintain specific evidence of administrative expenses related only to political expenditures or only to nonpolitical expenditures. Specifically identified administrative expenses shall not be included in the proportion established by subparagraph (D)(iii) but allocated by the actual amount of the expense.

(F) In this section, the term "political expenditures" includes direct campaign expenditures.

(18) In connection with a campaign:

(A) An expenditure is made in connection with a campaign for an elective office if it is:

(i) made for a communication that expressly advocates the election or defeat of a clearly identified candidate by:

(I) using such words as "vote for," "elect," "support," "vote against," "defeat," "reject," "cast your ballot for," or "Smith for city council;" or

(II) using such phrases as "elect the incumbent" or "reject the challenger," or such phrases as "vote pro-life" or "vote pro-choice" accompanied by a listing of candidates described as "pro-life" or "pro-choice;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified candidate;

(II) is distributed within 30 days before a contested election for the office sought by the candidate;

(III) targets a mass audience or group in the geographical area the candidate seeks to represent; and

(IV) includes words, whether displayed, written, or spoken; images of the candidate or candidate's opponent; or sounds of the voice of the candidate or candidate's opponent that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate;

(iii) made by a candidate or political committee to support or oppose a candidate; or

(iv) a campaign contribution to:

(I) a candidate; or

(II) a group that, at the time of the contribution, already qualifies as a political committee.

(B) An expenditure is made in connection with a campaign on a measure if it is:

(i) made for a communication that expressly advocates the passage or defeat of a clearly identified measure by using such words as "vote for," "support," "vote against," "defeat," "reject," or "cast your ballot for;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified measure;

(II) is distributed within 30 days before the election in which the measure is to appear on the ballot;

(III) targets a mass audience or group in the geographical area in which the measure is to appear on the ballot; and

(IV) includes words, whether displayed, written, or spoken, that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the passage or defeat of the measure;

(iii) made by a political committee to support or oppose a measure; or

(iv) a campaign contribution to a group that, at the time of the contribution, already qualifies as a political committee.

(C) Any cost incurred for covering or carrying a news story, commentary, or editorial by a broadcasting station or cable television operator, Internet website, or newspaper, magazine, or other peri-

odical publication, including an Internet or other electronic publication, is not a campaign expenditure if the cost for the news story, commentary, or editorial is not paid for by, and the medium is not owned or controlled by, a candidate or political committee.

(D) For purposes of this section:

(i) a candidate is clearly identified by a communication that includes the candidate's name, office sought, office held, likeness, photograph, or other apparent and unambiguous reference; and

(ii) a measure is clearly identified by a communication that includes the measure's name or ballot designation (such as "Proposition 1"), purposes, election date, or other apparent and unambiguous reference.

(19) Discount--The provision of any goods or services without charge or at a charge which is less than fair market value. A discount is an in-kind political contribution unless the terms of the transaction reflect the usual and normal practice of the industry and are typical of the terms that are offered to political and non-political persons alike, or unless the discount is given solely in order to comply with §253.041 of the Election Code. The value of an in-kind contribution in the form of a discount is the difference between the fair market value of the goods or services at the time of the contribution and the amount charged.

(20) School district--For purposes of §254.130 of the Election Code and §§20.3 (relating to Reports Filed with the Commission), 20.7 (relating to Reports Filed with Other Local Filing Authority), and 20.315 (relating to Termination of Campaign Treasurer Appointment) of this title, the term includes a junior college district or community college district.

(21) Vendor--Any person providing goods or services to a candidate, officeholder, political committee, or other filer under this chapter. The term does not include an employee of the candidate, officeholder, political committee, or other filer.

(22) Hybrid committee""A political committee that, as provided by section 252.003(a)(4) (relating to contents of a general-purpose committee's campaign treasurer appointment) or 252.0031(a)(2) (relating to a specific-purpose committee's campaign treasurer appointment) of the Election Code, as applicable, has filed a campaign treasurer appointment that includes an affidavit stating that:

(A) the committee is not established or controlled by a candidate or an officeholder; and

(B) the committee will not use any political contribution from a corporation or a labor organization to make a political contribution to:

(i) a candidate for elective office;

(ii) an officeholder; or

(iii) a political committee that has not filed an affidavit in accordance with this section.

(23) Direct campaign expenditure-only committee""A political committee, as authorized by section 253.105 of the Election Code (relating to political contributions to direct campaign expenditure-only committees) to accept political contributions from corporations or labor organizations, that:

(A) is not established or controlled by a candidate or an officeholder;

(B) makes or intends to make direct campaign expenditures;

(C) does not make or intend to make political contributions to:

(i) a candidate;

(ii) an officeholder;

(iii) a specific-purpose committee established or controlled by a candidate or an officeholder; or

(iv) a political committee that makes or intends to make political contributions to a candidate, an officeholder, or a specific-purpose committee established or controlled by a candidate or an officeholder; and

(D) has filed an affidavit with the commission stating the committee's intention to operate as described by subparagraphs (B) and (C) of this paragraph.

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.R. Johnson

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

The Texas Agricultural Finance Authority (TAFA), a public authority within the Texas Department of Agriculture (Department), adopts amendments to 4 TAC §28.2, concerning Definitions; §28.4, concerning Communication with the Authority; §28.5, concerning Texas Agricultural Fund; §28.10, concerning Authority; §28.13, concerning Definitions; §28.14, concerning Application Procedure for Applicant; §28.15, concerning Application Procedure for Lender; §28.20, concerning Authority; §28.23, concerning Definitions; §28.26, concerning Consideration of Applications; §28.32, concerning Criteria for Approval of Loan Guarantee; §28.35, concerning Loan Guarantee Administration; §28.36, concerning Interest Rebate Requirements and Procedures; §28.42, concerning Definitions; §28.43, concerning Application Procedure for Applicant; §28.44, concerning Application Procedure for Lender; §28.55, concerning Administration of Program; §28.60, concerning Purpose and Application of Rules; §28.61, concerning Definitions; and §28.62, concerning Collection of Funds by County Tax Assessor-Collector and Remittance to Comptroller without changes to the proposed text as published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2977). These rules will not be republished. TAFA identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039. The amendments are needed to reflect current procedures,

update statutory references, and make other nonsubstantive editorial changes.

The Department did not receive any comments on the proposed rules.

SUBCHAPTER A. FINANCIAL ASSISTANCE RULES

4 TAC §§28.2, 28.4, 28.5

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

The 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) 936-9360



SUBCHAPTER B. INTEREST RATE REDUCTION PROGRAM

4 TAC §§28.10, 28.13 - 28.15

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

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SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

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

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

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SUBCHAPTER D. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM RULES

4 TAC §§28.42 - 28.44

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

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SUBCHAPTER E. YOUNG FARMER GRANT PROGRAM RULES

4 TAC §28.55

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

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SUBCHAPTER F. RULES FOR DEPOSITION AND REFUND OF ASSESSMENT FEES

4 TAC §§28.60 - 28.62

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES

APPLICABLE TO ELECTRIC SERVICE

PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.505, relating to reporting requirements and the scarcity pricing mechanism in the Electric Reliability Council of Texas power region, with changes to the proposed text as published in the May 21, 2021, issue of the *Texas Register* (46 TexReg 3227). The rule will be republished. These amendments modify the value of the low system-wide offer cap (LCAP) by eliminating a provision that ties the value of the LCAP to the natural gas price index and replaces it with a provision that ensures resource entities are able to recover their actual marginal costs when the LCAP is in effect.

The commission received comments on the proposed amendments from NRG Energy, Inc. (NRG), Texas Electric Cooperatives, Inc. (TEC), the Lower Colorado River Authority (LCRA), Texas Industrial Energy Consumers (TIEC), South Texas Electric Cooperative, Inc. (STEC), the Steering Committee of Cities Served by Oncor and the Texas Coalition for Affordable Power (Cities/TCAP), ERCOT, Exelon Generation Company, LLC (Exelon), Texas Energy Association for Marketers (TEAM), Texas Competitive Power Advocates (TCPA), and Texas Retail Energy, LLC (Texas Retail). No party requested a hearing.

Subsection (g)(6)(A) - Removal of Natural Gas Price Index Component of the Low System Wide Offer Cap (LCAP)

Under §25.505(g)(6)(A), the LCAP is set on a daily basis to the higher of \$2,000/MWh or 50 times the natural gas price index calculated by ERCOT. The proposed amendments would eliminate the natural gas price index component and set the LCAP at \$2,000/MWh with no alternate calculation.

NRG, TIEC, Cities/TCAP, TEAM, and Texas Retail each expressed support for the proposed change to (g)(6)(A) that would remove the natural gas price index component of the LCAP. Cities/TCAP believed this decision was an important market policy that would provide greater certainty for consumers. TEAM and Texas Retail stated that the elimination of the natural gas price index provision would provide improved market predictability and stability while reducing price volatility.

TEC and STEC opposed eliminating the natural gas price index component of the LCAP calculation and argued in favor of reducing the multiplier. TEC specifically recommended that the 50X multiplier be reduced to 15X. STEC did not recommend a specific multiplier, but suggested it be sufficiently high to allow for full cost recovery by the most inefficient gas-fired resource in ERCOT. TEC and STEC each also recommended capping the LCAP at the high system wide offer cap (HCAP) to address the issue of gas prices driving the LCAP above the HCAP.

In support of its position, TEC argued that costs should be reflected in prices to the greatest extent possible and expressed concern that the proposed rule may result in escalating fuel costs during an emergency. Specifically, natural gas providers would know that, regardless of the fuel price charged, the costs would ultimately be reimbursed. TEC also expressed concern that certain load reduction programs are currently designed around a Value of Lost Load assumption set at \$9,000/MWh. Therefore, capping the price at something lower could result in less demand

response and less capital being invested to create additional demand response programs going forward.

STEC stated that a fuel index price multiplier supports reliability and market stability because it incentivizes a generation provider to lock-in and control its fuel costs. Further, this multiplier would mitigate the need for a make-whole provision and associated uplift allocation concerns. Without a fuel index multiplier, STEC continued, there would be no incentive for a generation provider to hedge its fuel costs and ensure that it was available during scarcity conditions because any costs above \$2,000/MWh would be passed through under the make-whole provisions with no profit margin.

Commission Response

The commission agrees that removing the natural gas price index provision provides greater market predictability and stability going forward. The commission disagrees with TEC and STEC that reducing the multiplier applied to the natural gas price index provides sufficient stability. Natural gas prices can vary significantly such that applying any multiplier could result in large swings in energy prices, as the events of February 2021 demonstrated.

While the commission acknowledges the concerns that TEC raises about load reduction programs, the commission disagrees that this rule change would have any impact on those programs over time. This rule only applies in the limited circumstances of when the system-wide offer cap is set at the LCAP and should not materially alter the value or growth of load reduction programs. Moreover, the passage of Senate Bill 3 by the 87th Texas Legislature requires a comprehensive review of ERCOT's scarcity pricing mechanism in the near future.

Subsection (g)(7) - Reimbursement for Operating Losses During an Event when the LCAP is in Effect

The proposed amendments include a make-whole provision that would require that "(d)uring an event when the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of real-time revenues. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement."

Subsection (g)(7): "during an event"

The proposed amendments require ERCOT to reimburse market entities *during an event*. Cities/TCAP, Exelon, Texas Retail, TCPA and TIEC all stated that the term "event" was not clearly defined in the proposed rule.

Cities/TCAP pointed out that while reimbursing resource entities for actual marginal costs in excess of real-time revenue for the duration of a qualifying event could be feasibly implemented, the current language could be interpreted as reimbursing resource entities for actual marginal costs in excess of real-time revenues for the duration of the calendar year once the peaker net margin threshold is met and the LCAP is in effect. Cities/TCAP suggested that additional language is needed to clarify that cost recovery will be for isolated, qualifying events and to incentivize generation availability during these events.

Exelon, TEAM, and Texas Retail each argued that the commission should adopt specific criteria for what constitutes an event. Exelon argued that the rule needs to provide certainty to resource entities as to whether requests for reimbursement will be granted and recommended that "event" refer to periods during

which ERCOT has issued an Operating Condition Notice or Energy Emergency Alert (EEA). Exelon stated that providing the incentive for full preparation in advance of an emergency increases the reliability of the system and could potentially avoid the emergency all together. Conversely, limiting recovery only to periods when the system is under an EEA or already in the midst of firm load shed could actually create an emergency. TEAM and Texas Retail, on the other hand, agreed that clarity was needed, but argued that a resource entity should only be allowed to receive payments for costs above the \$2,000/MWh cap if that entity is subject to a reliability unit commitment (RUC) instruction from ERCOT.

TCPA agreed that the term "event" needs further clarification but suggested that the commission delegate the task of defining an event to ERCOT stakeholders. TCPA also recommended that the commission modify the term to convey an expectation that the cost recovery mechanism only applies in exceptional circumstances.

TIEC, while not proposing specific changes, remarked that the proposal could be further improved by providing a clear framework for temporarily applying the LCAP during force majeure conditions. TIEC and LCRA both expressed an interest in working with the commission to expeditiously develop the emergency pricing mechanism required by Senate Bill 3.

Commission Response

The commission agrees that the term "event" lacks sufficient clarity and is superfluous to the meaning of the provision. Therefore, the phrase "during an event" has been deleted from the rule.

The commission disagrees with Cities/TCAP that the make-whole provision should be limited to isolated, qualifying events. The addition of (g)(7) is meant to make a resource entity whole when the LCAP prevents it from being able to make offers that are sufficient to cover its costs. As such, (g)(7) only applies when the real-time energy price is at or exceeds the LCAP but is not limited to specific events. Presently, the ERCOT system-wide offer cap is set to the LCAP for the first time. The commission agrees with Exelon that overly limiting the availability of the make-whole provision could contribute to the creation of new emergency conditions. Further, the commission intends to conduct a broader review of the scarcity pricing mechanism in the near future and can evaluate the effects of the make-whole provision at that time. The commission declines to delegate the decision of when the make-whole provision should apply to ERCOT stakeholders as recommended by TCPA for the same reasons.

The commission disagrees with TEAM and Texas Retail that the make-whole provision should be limited to resource entities that have received a RUC instruction from ERCOT. In addition to the reasons stated above, this is not a practical limitation since ERCOT would not know which resource entities risked exposure to high gas prices or other cost drivers in time to issue the necessary RUC instruction.

Implementation of the emergency pricing mechanism required by Senate Bill 3, as referenced by TIEC and LCRA, will be taken up in a future commission rulemaking.

Subsection (g)(7): "when the system wide offer cap is set to the LCAP"

TCPA and Exelon stated that the risk is not limited to when the LCAP is in effect, as extraordinary delivered fuel costs alone could exceed the HCAP of \$9,000/MWh. As such, TCPA and Exelon proposed that the cost recovery mechanism in (g)(7) should not be limited to periods when the LCAP is in effect. Exelon proposed striking the language in (g)(7) that would limit the cost recovery mechanism to periods when the LCAP is in effect, while TCPA acknowledged that this could be part of a broader, more holistic review of wholesale market design elements.

Commission Response

The commission declines to expand (g)(7) to apply when the system wide offer cap is set at the HCAP as suggested by TCPA and Exelon. Periods when the HCAP is in effect are outside of the limited scope of this rulemaking.

Subsection (g)(7): "ERCOT must reimburse..."

STEC, TEAM, and Texas Retail each expressed concerns with how the costs associated with the proposed reimbursement would be allocated. STEC argued that the commission should give considerable thought to the mechanism's design and implementation to ensure that the make-whole costs are appropriately allocated to loads that should ultimately bear them. STEC stated that any make-whole mechanism should be designed to encourage market participants to hedge their market positions and to avert punishment to market participants that appropriately hedged their load. Specifically, STEC pointed to the current Reliability Unit Commitment make-whole mechanism, which assigns up to two times the cost of the RUC make-whole costs to entities that are short in the market, as a potential model. STEC further clarified that, in this instance, the 2X multiplier would not be required.

TEAM and Texas Retail each suggested that the proposed cost recovery mechanism be clarified to provide clear direction to ERCOT and disallow the use of market uplift, as market uplift cannot be hedged. TEAM and Texas Retail each proposed variations of possible additions to proposed (g)(7) that would clarify that ERCOT will recover the reimbursement costs from entities which were counterparties to settlements for procurement of real-time energy during the event.

Commission Response

The commission declines to make changes in response to these comments. Broadly speaking, the commission agrees with STEC, Texas Retail, and TEAM that the make-whole provision should be implemented in a manner that encourages market participants to fully hedge their loads. ERCOT is best positioned to evaluate the precise consequences of each potential recovery methodology. The commission expects the proposals of the commenters in this project to be among the proposals ERCOT considers in designing its reimbursement process.

Subsection (g)(7): "any actual marginal costs"

The proposed amendments would require ERCOT to reimburse resource entities for their *marginal costs* in excess of real time revenues. TCPA, Exelon, NRG, and TEC each argued that reimbursement for "marginal costs" does not provide adequate compensation for resource entities.

TCPA explained that generators regularly incur additional operating expenses that may not be considered marginal costs. Operating costs, they continued, are taken in support of grid reliability with an expectation that the market will support those prudent

decisions. TCPA requested the commission replace "marginal costs" with "operating costs." Similarly, Exelon requested that "marginal costs" be replaced with "reasonably and prudently incurred operating costs."

TEC believed that resource owners might not be incented to acquire high-cost natural gas unless they were guaranteed both complete cost recovery plus a margin. TEC proposed a reference to verifiable costs that are equal to or greater than what a unit would receive from a RUC over the current "marginal costs" in (g)(7).

NRG recommended that the commission allow resource entities to recover an additional margin above their marginal costs. NRG argued that this would provide a performance incentive and reduce the risk of financial loss for generators operating in times of scarcity.

Commission Response

The commission disagrees that reimbursement for marginal costs does not provide adequate compensation for resource entities. The ERCOT energy-only market is not designed to guarantee recovery of all of a resource entity's costs across all intervals. Rather, it provides recovery of marginal costs for most intervals and other costs across the lifetime of an asset. The commission also disagrees with TEC that marginal costs would disincentivize resource owners from running when the cost of natural gas is sufficiently high. Fuel costs are precisely the type of cost that this make-whole provision provides protection against. Finally, while the commission agrees with NRG that providing an additional margin might provide a performance incentive to resource entities, it is not appropriate or consistent with the current market structure to require ERCOT to finance this incentive beyond recovery of a resource's marginal costs.

Subsection (g)(7): "real time revenues"

The proposed make-whole provision would allow resource entities to recover their actual marginal costs in excess of "real-time revenues." TIEC and ERCOT each proposed alternatives to "real-time revenues" to avoid potential over-recovery. TIEC recommended replacing "real-time revenues" with the "LCAP" to clarify that a generator's revenues must be insufficient due to the operation of the LCAP, rather than a generator simply bidding too low. Similarly, ERCOT recommended "the larger of the LCAP or the real-time energy price for the resource" to prevent reimbursement for operating losses when the real-time energy price for a resource is less than the LCAP.

Commission Response

The commission agrees with the concerns expressed by TIEC and ERCOT that the proposed amendments could result in over recovery by resource entities. The commission has replaced "real-time revenues" with "the larger of the LCAP or the real-time energy price for the resource" in (g)(7) as recommended by ERCOT. The addition of (g)(7) is meant to make a resource entity whole when the LCAP prevents it from being able to make offers that are sufficient to cover its marginal costs. When the real-time energy price is at or exceeds LCAP, a resource entity would be made-whole for their marginal costs, minus the real-time revenues received.

The commission further agrees with ERCOT's clarification that a resource entity should only be reimbursed for its actual marginal costs in excess of the larger of the LCAP or the

real-time energy price for the resource. Even when prices are at the LCAP, the actual price for a particular resource may be higher than the LCAP due to factors such as congestion pricing. The reimbursement is based on the actual price the resource is receiving (i.e. including the congestion price).

Subsection (g)(7): "ERCOT must utilize existing settlement processes...to verify ...costs for reimbursement"

LCRA supported the proposed rule language that will require ERCOT to reimburse resource entities for their actual marginal costs that exceed real-time revenues, but opined that "...the 'existing settlement processes' that resource entities must exhaust at ERCOT to prove up their actual costs rarely result in complete or timely dispositions." LCRA asked the Commission to give clear direction to ERCOT that the actual costs submitted by the resource entity and supported by appropriate documentation should be given significant weight.

Commission Response

The commission declines to direct ERCOT to give significant weight to the actual costs submitted by the resource entity and supported by appropriate documentation as requested by LCRA. The commission expects ERCOT to develop a process for determining the level of reimbursement that gives an appropriate weight to the actual costs submitted by a resource entity but also guards against over recovery by resource entities. The commission agrees with LCRA that this process should be as complete and timely as practicable, but not at the expense of ERCOT's ability to properly evaluate the submitted costs.

Other Comments

TEC recommended that the Commission prohibit critical gas infrastructure from participating in the wholesale market during emergencies as Load Resources or in the Emergency Response Service program at ERCOT, unless such load has proven capable to continue to operate during these conditions. TEC believed that critical gas supply chain infrastructure should not be compensated to shed load and exacerbate a gas shortage during an emergency.

Commission Response

The concerns raised by TEC are outside of the limited scope of this rulemaking. The commission will address this issue in Project No. 51888, *Review of Critical Load Standards and Processes*.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these amendments, the commission makes other minor modifications for the purpose of clarifying its intent.

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

other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: Public Utility Regulatory Act §14.002, 39.101, and 39.151.

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

(a) General. The purpose of this section is to prescribe reporting requirements for the Electric Reliability Council of Texas (ERCOT) and market participants, and to establish a scarcity pricing mechanism for the ERCOT market.

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

(1) Generation entity -- an entity that owns or controls a generation resource.

(2) Load entity -- an entity that owns or controls a load resource. A load resource is a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(3) Resource entity -- an entity that is a generation entity or a load entity.

(c) Resource adequacy reports. ERCOT must publish a resource adequacy report by December 31 of each year that projects, for at least the next five years, the capability of existing and planned electric generation resources and load resources to reliably meet the projected system demand in the ERCOT power region. ERCOT may publish other resource adequacy reports or forecasts as it deems appropriate. ERCOT must prescribe requirements for generation entities and transmission service providers (TSPs) to report their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also must prescribe requirements for load entities to report their plans for adding new load resources or retiring existing load resources.

(d) Daily assessment of system adequacy. Each day, ERCOT must publish a report that includes the following information for each hour for the seven days beginning with the day the report is published:

(1) System-wide load forecast; and

(2) Aggregated information on the availability of resources, by ERCOT load zone, including load resources.

(e) Filing of resource and transmission information with ERCOT. ERCOT must prescribe reporting requirements for resource entities and TSPs for the preparation of the assessment required by subsection (d) of this section. At a minimum, the following information must be reported to ERCOT:

(1) TSPs will provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities will provide ERCOT with information on planned and existing generation outages.

(3) Load entities will provide ERCOT with information on planned and existing availability of load resources, specified by type of ancillary service.

(4) Generation entities will provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) will provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(f) Publication of resource and load information in ERCOT markets. To increase the transparency of the ERCOT-administered markets, ERCOT must post the information required in this subsection at a publicly accessible location on its website. In no event will ERCOT disclose competitively sensitive consumption data. The information released must be made available to all market participants.

(1) ERCOT will post the following information in aggregated form, for each settlement interval and for each area where available, two calendar days after the day for which the information is accumulated:

(A) Quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves;

(B) Self-arranged energy and ancillary capacity services, for each type of service;

(C) Actual resource output;

(D) Load and resource output for all entities that dynamically schedule their resources;

(E) Actual load; and

(F) Energy bid curves, cleared energy bids, and cleared load.

(2) ERCOT will post the following information in entity-specific form, for each settlement interval, 60 calendar days after the day for which the information is accumulated, except where inapplicable or otherwise prescribed. Resource-specific offer information must be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT must post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource. ERCOT will use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) to determine the control of a resource and must include this information in its market operations data system.

(A) Offer curves (prices and quantities) for each type of ancillary service and for energy in the real time market, except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT will post the offer price and the name of the entity submitting the offer three calendar days after the day for which the information is accumulated.

(B) If the clearing prices for energy or any ancillary service exceeds a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other ancillary service that is at or above a calculated value that is equal to

50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, for that service and that interval must be posted seven calendar days after the day for which the offer is submitted.

(C) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point;

(D) The load and generation resource output, for each entity that dynamically schedules its resources; and

(E) For each hour, transmission flows, voltages, transformer flows, voltages and tap positions (i.e., State Estimator data). Notwithstanding the provisions of this subparagraph and the provisions of subparagraphs (A) through (D) of this paragraph, ERCOT must release relevant State Estimator data earlier than 60 days after the day for which the information is accumulated if, in its sole discretion, it determines the release is necessary to provide a complete and timely explanation and analysis of unexpected market operations and results or system events, including but not limited to pricing anomalies, recurring transmission congestion, and system disturbances. ERCOT's release of data in this event must be limited to intervals associated with the unexpected market or system event as determined by ERCOT. The data released must be made available simultaneously to all market participants

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

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when $RTEP - POC > 0$.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh and \$2,000 per MW per hour.

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

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

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

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

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

(h) Development and implementation. ERCOT must use a stakeholder process to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

19 TAC §§89.1501, 89.1503, 89.1504, 89.1507, 89.1511

The Texas Education Agency (TEA) adopts amendments to §§89.1501, 89.1503, 89.1504, 89.1507, and 89.1511, concerning the Communities In Schools (CIS) program. The amendments are adopted with changes to the proposed text as published in the March 19, 2021 issue of the *Texas Register* (46 TexReg 1720) and will be republished. The adopted amendments modify the rules to reflect updates in program management and align with current practice.

REASONED JUSTIFICATION: The CIS program is a statewide youth dropout prevention program that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis.

The commissioner has adopted Chapter 89, Subchapter EE, to establish provisions related to the CIS program, as required by Texas Education Code (TEC), §33.154 and §33.156.

The rules in the subchapter define terms related to the program and outline the equitable funding formula for local CIS programs.

The rules also establish policies concerning TEA's responsibility in requiring demonstration of community participation by local CIS affiliates and TEA's responsibility to obtain information from participating CIS affiliates.

Finally, the rules set standards for state performance goals, objectives, and measures for the program that include improvement in student behavior and academic achievement as well as promotion, graduation, retention, and dropout rates. As authorized under TEC, §33.154, the commissioner may withhold funding from programs that consistently fail to achieve the performance goals, objectives, and measures.

The adopted amendments to 19 TAC Chapter 89, Subchapter EE, update the rules as follows.

Section 89.1501, Definitions, corrects the definition for *case-managed student* to align with how needs are categorized in the field.

Section 89.1503, Funding, establishes that the data used for the funding calculation will be from the most recent school year for which final data are available rather than from the first year of the preceding biennium. This change ensures the data used is the most current data available. New subsection (e) accounts for the possibility of a CIS program merger by describing the allotment for the merged program. Based on public comment, language was added to subsection (e) at adoption to include the stipulation that only adjacent CIS affiliates can merge for funding purposes and require that merging affiliates submit a proposed plan for the merger describing the need for the merger and the local educational agencies (LEAs) to be served prior to the posting of the subsequent school year's CIS Grant Program Guidelines.

Section 89.1504, Demonstration of Community Participation, removes in-kind contributions and the use of federal funds by a CIS program as methods to show community participation through the 25% TEA grant match. This change aligns the rule with the current requirements in the CIS grant application and emphasizes the importance of adequate funding to support quality programming. The amendment specifies that TEA may not award funding to a local CIS program if the program's allocation by TEA and matching contributions would not allow the program to adequately serve case-managed students within the required ratio of case-managed students per site staff member. This change ensures that a program has adequate resources to effectively meet the needs of the case-managed students it serves.

Section 89.1507, Case-Managed Students, removes language from subsection (c) addressing actions that may occur if a program does not stay within the required maximum number of case-managed students per site. The language is added in §89.1504(b) and §89.1511(a)(2).

Section 89.1511, Performance Standards and Revocation of Grant Award, includes exceeding the ratio of case-managed students per site staff member as a reason for completion of a Program Improvement Plan (PIP) regarding case-managed students. This update ensures that CIS programs create strategies to lower the ratio of case-managed students per site staff member and that they are held accountable to meeting the ratio. The new language requires the PIP to include monitoring information to ensure that programs consider how they will evaluate the proposed strategies and initiatives within the PIP. Based on public comment, subsection (b)(7) has been added at adoption to define a TEA Action Plan as a plan created to address deficiencies in grantee performance that would set

forth actions aligned to the expectations within the CIS Grant Program Guidelines.

Other changes to §89.1511 align with current practice. Subsection (a)(4) specifies that funding for CIS programs that do not reach their case-managed student target or the ratio of case-managed students per site staff member may be reduced rather than non-renewed or revoked to add flexibility in accountability. Subsection (b)(3) codifies the reporting of student growth performance standards in rule. Subsection (b)(5)(C) is added and subsection (b)(5)(E) requires the PIP to include further explanation and monitoring for performance standards in academic achievement, behavior, dropout rates, graduation, and promotion/retention. Subsection (e)(1)(C) specifies an additional reason the commissioner can deny a program's renewal or future eligibility to further increase accountability.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the rule action began March 19, 2021, and ended April 19, 2021. Following is a summary of the public comments received and corresponding agency responses.

Comment: An individual expressed concern with the ability of the commissioner of education to deny renewal or eligibility for a CIS program based on failure to comply with a TEA Action Plan due to a lack of detail concerning the Action Plan within the proposed rule.

Response: The agency agrees. Section 89.1511(b)(7) has been added at adoption to define a TEA Action Plan as a plan created to address deficiencies in grantee performance that would set forth actions aligned to the expectations within the CIS Grant Program Guidelines.

Comment: An individual expressed concern regarding the added language permitting a merger between two or more CIS affiliates in §89.1503(e), stating that the previously served communities may not be served by the merged affiliate and that there is no consideration of the merger by the agency prior to the merger.

Response: The agency agrees. Section 89.1503(e) has been modified at adoption to include the stipulation that only adjacent CIS affiliates can merge for funding purposes and to require that merging affiliates submit a proposed plan for the merger describing the need for the merger and the LEAs to be served.

Comment: An individual expressed concern with using the most recent school year's data in §89.1503(c)(2)(C)(i) due to unforeseen events that may skew the data.

Response: The agency disagrees. The agency cannot account for all of the anomalies that may occur during the school year and must use the data that is available.

Comment: An individual expressed appreciation for the thoughtful rule update.

Response: The agency agrees.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §33.154, which authorizes the commissioner to adopt rules that implement policies regarding the setting of performance standards for the Communities In Schools (CIS) program, the collection of information to determine accomplishment of those standards, and withholding funding from any program that consistently fails to meet the standards; and TEC, §33.156, which directs the Texas Education Agency to develop an equitable funding formula to fund local CIS programs and authorizes local CIS programs to accept other funding from federal, state, school, or other sources.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §33.154 and §33.156.

§89.1501. Definitions.

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

(1) **Case-managed student**--A student who is assessed to be in need of and receives Communities In Schools (CIS) services to address academic, attendance, behavior, and/or social service needs related to improving student achievement according to the requirements in the grant application.

(2) **Developing program**--An entity funded through the replication process for the purposes of establishing and implementing a local CIS program within a five-year period following the requirements in the grant application.

(3) **Local CIS program**--A Communities In Schools 501(c)(3) non-profit organization established in accordance with the program model and state guidelines authorized by state law and meeting all the requirements in the grant application for establishing and maintaining a local CIS program.

§89.1503. Funding.

(a) **Equitable funding formula.** As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. State and federal funds remaining after allocations described in subsection (c)(1) of this section shall be allocated to local CIS programs.

(b) **Developing programs.**

(1) A developing program may receive a funding amount each year for a minimum of five years, including the first-year start-up funding for planning purposes. Priority will be given to developing programs as funds are allocated.

(2) A developing program that has met all the requirements for establishing a local CIS program before the fifth year may request to be considered as a local CIS program for funding determined under subsection (c)(2) of this section if approved by the TEA.

(c) **Allocation.**

(1) Annually, after federal and state funds for the CIS program have been set aside for administration, no more than 10% in total may be allocated for the following:

(A) CIS database development and maintenance;

(B) grant opportunities, as applicable, in accordance with subsection (f) of this section; and

(C) state leadership activities benefitting local CIS programs in accordance with the TEC, §33.154.

(2) Local CIS programs shall receive a funding amount each year to be allocated based on the following criteria:

(A) an equal base amount of funds, as determined by the TEA;

(B) no less than 50% nor more than 80% of the specified funding amount based on the relative proportion of the number of case-managed students to be served by each local CIS program to the total number of case-managed students to be served by all local CIS programs;

(C) no less than 5.0% nor more than 15% of the specified funding amount based on the weighted financial resources of the

individual communities and school districts, if less than the average financial resources of all school districts participating in the program.

(i) Data elements used for calculation of the financial resources allocation. Weighted financial resources will be determined using the following data elements from the most recent school year for which final data are available:

(I) taxable property values determined in accordance with Texas Government Code, Chapter 403, Subchapter M, for school districts listed in each program's current grant application;

(II) weighted average daily attendance (WADA), as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application; and

(III) the number of eligible students at the campus level, as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application.

(ii) Method used for calculation of the weighted financial resources. Weighted financial resources of a local CIS program are calculated in the following way.

(I) The weighted average taxable property value per WADA (wealth per WADA) for all local CIS programs is determined by first multiplying the wealth per WADA for each district within the CIS program by the district's WADA, summing the results for all districts, and then dividing the resulting sum by the total WADA in the CIS program.

(II) The average wealth per WADA for all CIS programs is then calculated.

(III) A local CIS program with a below-average wealth per WADA receives weighted financial resources. The weighted financial resources for a local CIS program with a below-average wealth per WADA are calculated as follows.

(-a-) The weighted eligible students number is derived by dividing the eligible students number by the ratio of the local CIS program's wealth per WADA to the average program wealth per WADA.

(-b-) The weighted eligible students numbers for all programs with a below-average wealth per WADA are summed.

(-c-) The ratio of each individual program's weighted eligible students to the total weighted eligible students is applied to the total amount allocated for the financial resources allocation. This amount forms the program's financial resources allocation.

(3) If a local CIS program declines to accept allocated grant funds, the TEA may redistribute grant funding competitively, equally, or based on a formula among participating local CIS programs.

(d) CIS program replication and expansion. Should the legislature authorize an increase in the funds appropriated for the state CIS program or should funds become available because of loss of program funding or grant revocation, the TEA may designate an amount of the increase to be reserved for replication and/or expansion.

(1) Replication. The TEA may determine and retain a funding amount for replication of the CIS program in areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive request for application process or through any other process the TEA deems necessary. First-year replication funding may be a one-time planning grant for the development of a business plan.

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program.

(e) CIS program merger. For purposes of funding, only local CIS programs geographically adjacent to one another may merge into one CIS program. If two or more local CIS programs merge into one CIS program, the equal base allotment as determined in subsection (c)(2)(A) of this section may be allocated to the merged CIS program for a maximum of two years after the merger takes place. After two years, the merged CIS program will be considered a single CIS program within the funding formula and receive one equal base allotment. Local CIS programs seeking to merge for funding purposes must submit to TEA, prior to the posting of the subsequent school year's CIS Grant Program Guidelines, a proposed plan for the merger describing the need for the merger and the local educational agencies to be served.

(f) Special initiatives. If the TEA partners or contracts with other agencies or entities to implement special initiatives, activities, or programs that support dropout prevention efforts, local CIS programs will have the discretion of whether to participate in the special initiatives. Selection of local CIS programs for participation may be determined by the TEA and the partner, or contractor, depending on the variables of the initiative.

§89.1504. Demonstration of Community Participation.

(a) Each local Communities In Schools (CIS) program must provide cash contributions to operate the CIS program in an amount equal to at least 25% of the total funding allocated to the local CIS program by the Texas Education Agency (TEA). The contribution may be met using private, local, or state sources. Developing programs must comply with this provision beginning in the second year of operation.

(b) The TEA may choose not to award funding to a local CIS program if the TEA determines that the total estimated allocation by the TEA and the local CIS program's matching contribution of 25% is insufficient to adequately serve the required number of case-managed students as determined in §89.1507 of this title (relating to Case-Managed Students) or serve them within the required maximum number of case-managed students per site staff member as determined in the grant application.

§89.1507. Case-Managed Students.

(a) Each local Communities In Schools (CIS) program is required to serve a specific number of case-managed students each year. The specific number of case-managed students to be served will be identified in the annual grant application.

(b) To determine the number of case-managed students to be served by each local CIS program, the Texas Education Agency (TEA) will apply one of the following calculations:

(1) the relative proportion of the number of eligible students attending the campuses served or to be served by the respective local CIS program to the number of eligible students in all campuses served or to be served by all CIS programs;

(2) the relative proportion of the number of campuses served or to be served according to the most recent data by the respective local CIS program to the number of campuses served or to be served by all CIS programs; or

(3) the relative proportion of the specified number of case-managed students for the respective local CIS program as identified in the current year's grant application to the total number of case-managed students for all CIS programs.

§89.1511. Performance Standards and Revocation of Grant Award.

(a) Performance standards for a local Communities In Schools (CIS) program regarding the number of case-managed students served.

(1) A local CIS program that fails to serve the number of case-managed students indicated in its grant application by the end of

the school year of any given year may receive a reduced case-managed student target the following grant year and a proportional reduction in funding.

(2) A local CIS program that exceeds the required maximum number of case-managed students per site staff member as determined in the grant application may receive a reduced case-managed target and a proportional reduction in funding.

(3) Following the end of a given school year, a local CIS program that fails to serve the number of case-managed students identified in its grant application or fails to meet the ratio of students per site staff member on at least one campus as established in the grant application must submit to the Texas Education Agency (TEA) a Program Improvement Plan (PIP) detailing how the CIS program will reach the case-managed student target or reduce the ratio as required. The PIP must include the following:

- (A) local program contact information;
- (B) the number of case-managed students listed in the grant application;
- (C) the actual number of case-managed students served;
- (D) an explanation detailing the reasons the local CIS program did not serve the number of case-managed students indicated in its grant application or exceeded the maximum ratio of students per site staff member on at least one campus;
- (E) a list of the proposed strategies and initiatives that will be implemented to meet the case-managed student target or reduce the ratio of students per site staff member;
- (F) timelines for each proposed strategy and initiative, including how the effectiveness of each strategy will be monitored, who will monitor each strategy, and when monitoring will occur; and
- (G) a list of fiscal, logistical, and human resources necessary to meet the case-managed student target or maximum ratio of students per site staff member.

(4) A local CIS program may have its grant award non-renewed, reduced, or revoked if it fails to meet its case-managed student target or the ratio of students per site staff member as identified in the grant application for three years out of a four-year period.

(b) Performance standards for a local CIS program regarding state targets in academic achievement, behavior, dropout rates, graduation, and promotion/retention.

(1) In accordance with the Texas Education Code (TEC), §33.154(a)(2), performance standards that consider student academic achievement, behavior, dropout rates, graduation, and promotion/retention shall be established for local CIS programs within the annual grant application.

(2) Each local CIS program shall report data to the TEA that indicates performance on the established standards. Pursuant to the TEC, §33.154(a)(7)(B), each school district that participates in a CIS program shall provide to the local CIS or developing program necessary student information and data for each student whose parent or legal guardian has authorized in writing that educational records be shared with the CIS program and the TEA. Such information and data may include records on a student's academic achievement, promotion, attendance, disciplinary referrals, free/reduced-price lunch status, at-risk status, or health-related information in accordance with the written authorization obtained by the local CIS program from the student's parent or legal guardian. A local CIS program or developing program may provide this information and data to the TEA in accordance with the grant application.

(3) Local CIS programs shall report student growth performance standards using the indicators outlined in the grant application.

(4) The TEA shall notify local CIS programs that did not meet performance standards in any area, within a 5.0% variance, following the end of each school year.

(5) A local CIS program that fails to meet performance standard(s) in any area within a 5.0% variance must submit to the TEA a PIP detailing how the CIS program will improve in the performance standard by the end of the next grant year period. The PIP shall include the following:

- (A) local program contact information;
- (B) a list of the performance standard(s) as listed in the grant application with the program's associated performance percentages;
- (C) an explanation detailing the reason(s) the local CIS program did not meet the performance standard(s);
- (D) a list of the proposed strategies and initiatives that will be implemented to meet the performance standard(s) that were not met;
- (E) timelines for each proposed strategy and initiative, including how the effectiveness of each strategy will be monitored, who will monitor each strategy, specific data to be reviewed, and when monitoring will occur; and
- (F) a list of fiscal, logistical, and human resources necessary to reach the performance standard(s).

(6) The TEA will review and provide feedback on PIPs.

(7) TEA reserves the right to create an Action Plan to address deficiencies in grantee performance. The Action Plan would set forth actions aligned to the expectations within the CIS Grant Program Guidelines.

(d) Performance standards for a developing program. A developing program that does not meet the requirements for establishing a local CIS program as specified in the request for application may have its grant funding non-renewed or revoked in accordance with subsection (e)(2) of this section.

(e) Revocation of grant award.

(1) The commissioner may deny renewal of or future eligibility for the grant award of a local CIS program based on any of the following:

- (A) non-compliance with the grant application assurances and/or requirements;
- (B) failure to improve after being placed on a PIP for three consecutive years; or
- (C) failure to comply with a TEA Action Plan.

(2) The commissioner may deny renewal of or revoke the grant award of a developing program based on any of the following:

- (A) non-compliance with the grant application assurances and/or requirements;
- (B) lack of program success as evidenced by progress reports and program data;
- (C) failure to meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the developing program.

(3) A decision by the commissioner to deny renewal or revoke authorization of a grant award is final and may not be appealed.

(4) Revoked funds may be used for CIS program replication and/or expansion in accordance with §89.1503(d) of this title (relating to Funding).

(5) A program whose grant has been non-renewed or revoked is eligible to apply for replication funding in accordance with §89.1503(d) of this title after one year from the fiscal year the grant was non-renewed or revoked.

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

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 9, 2021, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability and performance monitoring. The amendment is adopted with changes to the proposed text as published in the April 16, 2021 issue of the *Texas Register* (46 TexReg 2548) and will be republished. The amendment adopts applicable excerpts of the *2021 Accountability Manual*.

REASONED JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update §97.1001 annually to refer to the most recently published accountability manual.

The amendment to §97.1001 adopts excerpts of the *2021 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the *2021 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction des-

ignations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered are updated to align with 2021 accountability, and present tense is applied throughout.

Chapter 1 gives an overview of the entire accountability system. Introductory language is revised to note that the manual explains the processes used to produce 2021 accountability data reports instead of to calculate ratings and award distinction designations. The link to accountability development proposals and supporting materials is updated. The *Not Rated: Declared State of Disaster* description is updated to remove closure of schools during the state's testing window as a cause for the rating label. The summer administration is removed from the chart depicting the accountability subset rule as well as from the descriptive bullets below the chart. The "STAAR Retest Performance" section is updated to indicate that Grades 5 and 8 retests are not considered, as this administration did not occur. The "STAAR Retest Performance" section is also updated to reflect that if a student's spring 2021 score is the best result, the student does not meet the accountability subset rule for inclusion at Campus A or Campus B. A section is added to describe the process for SAT/ACT inclusion. The career and technical education (CTE) and military enlistment indicators are removed from the "TSDS PEIMS-Based Indicators" list as these are not considered for 2021. A note describing the rationale for the removal of military enlistment data is added.

Chapter 2 describes the "Student Achievement" domain. The "Overview" section is updated to include that for 2021, component raw scores are displayed; neither raw nor scaled scores are calculated for the "Student Achievement" domain. The "STAAR Component-Assessments Evaluated" section is updated to make conforming changes and to include SAT/ACT results for accelerated testers. The "STAAR Component-Substitute Assessments" section is removed. The "STAAR Component-Minimum Size Criteria and Small Numbers Analysis" section is updated to add SAT/ACT methodology, including assessments results, students evaluated, methodology, and accountability subset rules. The "College, Career, and Military Readiness Component" section is updated to include a deadline of August 31 immediately following high school graduation for an associate degree, to remove the "CTE Coherent Sequence Coursework Aligned with Industry Based Certifications" indicator, and to note data discrepancies in Armed Forces enlistment data. The "CTE Coherent Sequence Coursework Transition" section is removed. References to the half point credit is removed from the "College, Career, and Military Readiness Component-Methodology" section. Clarifying language is added to the "Graduation Rate" section, noting that the best rate is used. Clarifying language is also added to the annual dropout rate calculations.

Chapter 3 describes the "School Progress" domain. The "Overview" section is updated to indicate that for 2021, neither raw nor scaled scores are calculated for the "School Progress" domain. The "School Progress, Part A" section is updated to indicate that the U.S. Department of Education (USDE) granted Texas a waiver of assessment, accountability and school identification, and certain related reporting requirements for the 2019-2020 school year. As a result, Texas will not calculate

School Progress: Part A: Academic Growth for 2021. The remaining text of School Progress, Part A is removed. The "Part B: Relative Performance-Assessments Evaluated" section is updated to remove substitute assessments. A note is added to the "Part B: Relative Performance Score" section to indicate that component raw scores are displayed; neither raw nor scaled scores are calculated. The following example subsection and "Domain Rating Calculation" section are removed.

Chapter 4 describes the "Closing the Gaps" domain. The "Overview" section is updated to indicate that for 2021, component raw scores are displayed; neither raw nor scaled scores are calculated for the "Closing the Gaps" domain. The "Academic Achievement-Assessments Evaluated" section is updated to indicate that SAT/ACT results for accelerated testers are included. The "Academic Achievement-Substitute Assessments" and the "Academic Growth Components" sections are removed. A note is inserted to state that because of the 2020 USDE waiver, Texas does not have the data necessary to calculate Academic Growth. The remainder of the Academic Growth sections is removed. Text in the "Federal Graduation Status" section referring to Academic Growth is removed. The "Four-Year Graduation Rate Target" section is amended to remove text indicating that Texas requested to amend the graduation rate methodology. The "Federal Graduation Status-Methodology" section is amended to include updated graduation rate indicator criteria. The "English Language Proficiency Component" section is updated to remove language referring to the 2020 rating label and add that either a 2019 or 2020 Texas English Language Proficiency Assessment System (TELPAS) composite rating is used. The "Student Achievement Domain Score" section is updated to include SAT/ACT results for accelerated testers. The "Student Achievement Domain Score: STAAR Component Only-Substitute Assessments" section is removed. The College, Career, and Military Readiness Performance Status is updated to add a deadline of August 31 immediately following high school graduation for an associate degree, to remove the "CTE Coherent Sequence Coursework" criteria, and to add a note describing the data discrepancies in the Armed Forces enlistment data. The "Participation Status" section is updated to remove the reference to substitute assessments and to note that TEA received a waiver to only report reading and mathematics participation rates for districts and campuses for 2021. The "Calculating a Closing the Gaps Domain Score" section is removed. Baseline graduation rates are added to the "2021 Closing the Gaps Performance Targets" chart.

Chapter 5 describes how the overall ratings are calculated. Due to all campuses and districts receiving *Not Rated: Declared State of Disaster* in 2021, all language after the "Overview" section is removed.

Chapter 6 describes distinction designations. Chapter 6 is updated to clarify that in 2021, all districts and campuses receive a *Not Rated: Declared State of Disaster* label and that distinction designations are not awarded. Campus comparison groups are still calculated, so this section remains. All other sections in this chapter are removed.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. The "Pairing Process" section is updated to remove language stating that the pairing process was not necessary in 2020. The 50% student enrollment in Grades 6-12 criteria is updated to 90% in the "AEA Campus Registration Criteria" section. Language in the "AEA Charter School Identification" section is clarified.

Chapter 8 describes the process for appealing ratings. Language is added to indicate that in 2021, districts and campuses cannot appeal the rating of *Not Rated: Declared State of Disaster*. All other language is removed.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Clarifying language is added to indicate that the rating labels used to determine multiple-year unacceptable status include *F, Improvement Required, Academically Unacceptable*, or *AEA: Academically Unacceptable*. This section also clarifies that an overall rating of *D* or *F* in 2019 and in 2022 are considered consecutive. Language is added stating that due to the lack of 2021 accountability ratings, the campuses identified for Public Education Grant (PEG) based on 2019 ratings remain on the 2022-2023 PEG List. The "Campus Identification Numbers" section is updated to clarify that *Academically Unacceptable* and *AEA: Academically Unacceptable* are also included in ratings history that may be linked across campus numbers.

Chapter 10 provides information on the federally required identification of schools for improvement. The "Overview" section is updated to acknowledge the waiver to the state's Every Student Succeeds Act (ESSA) plan to the USDE, requesting that existing comprehensive support and improvement, targeted support and improvement, and additional targeted support labels be retained for 2021-2022, that the identification of the next cohort be delayed one year until August 2022, that the escalation of three-year additional targeted support (ATS) campuses to comprehensive status be postponed until August 2023, that campuses must opt in for continued interventions to receive funding for 2021-2022, and that current comprehensive support and improvement campuses identified solely by the graduation rate criteria may exit if the campus meets the graduation rate exit criteria. The "Overview" section also includes the updated timeline for Title I campuses identified for ATS for three consecutive years and exit criteria for comprehensive support and improvement campuses. All other sections in Chapter 10 are removed.

Chapter 11 describes the local accountability system (LAS). Language identifying the legislative session that established LAS is removed. The "Overview" section is updated to clarify that in 2021, districts and campuses receive a *Not Rated: Declared State of Disaster* label overall and in each domain. Clarifying language is added in the "LAS Implementation" and "Ratings Under LAS" sections. The "2021 LAS Ratings" section is amended to clarify that in 2021, districts and campuses receive a *Not Rated: Declared State of Disaster* label overall and in each domain and that the 2021 state and LAS ratings are not combined. All other language in this section is removed. The "LAS Appeals" section is amended to clarify that neither the 2021 state nor LAS rating labels can be appealed. All other language in this section is removed.

Changes were made to the manual since published as proposed. The adopted manual includes the following changes either to provide clarification or in response to public comment.

Chapter 1 was revised in response to public comment to state that in 2021, districts and campuses receive a *Not Rated: Declared State of Disaster* label overall and in each domain; distinction designations are not awarded for 2021; School Progress: Part A: Academic Growth is not calculated; and Advanced Placement results through August are considered. The school types

chart and the corresponding example were also updated to reflect 2021 data.

Chapter 2 was updated to indicate that the request to delay the inclusion of SAT/ACT results for accelerated testers was not approved, and, therefore, these results are included in the STAAR component. Multiple examples of small numbers analysis calculations were added in response to public comment.

Chapter 4 was updated in response to public comment. Language was revised to note that English learner performance measures for all grade levels are evaluated, Graduation Rate component criteria language was clarified, and references to the ESSA state plan addendum were removed.

Chapter 9 was updated to clarify information regarding campus identification number processes.

Chapter 10 was updated to reflect the approved 2021 ESSA waiver request. The chart depicting the escalation from additional targeted support to comprehensive targeted support was updated in response to public comment. The four-year graduation rate was added as a means to exit comprehensive support identification in response to public comment.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 16, 2021, and ended May 17, 2021. A public hearing on the proposal was held on April 30, 2021. Following is a summary of the public comments received and the corresponding agency responses.

Comment. One school district staff member asked if the removal of 2020 State of Texas Assessments of Academic Readiness (STAAR®) end-of-course (EOC) language was due to COVID and requested that it be included in the 2021 manual.

Response. The agency disagrees. Summer 2020 STAAR® EOCs were not administered and, therefore, will not be included in accountability calculations. Including a reference to summer 2020 STAAR® EOCs in the manual would create confusion.

Comment. A school district staff member requested that the Advanced Placement (AP) scores of eighth graders contribute towards College, Career, and Military Readiness (CCMR) indicators.

Response. The agency disagrees. Except for the Texas Success Initiative Assessment, the agency evaluates CCMR indicators earned during the four years prior to high school graduation.

Comment. A district staff member requested clarifying language on graduation type codes for the Graduate Under an Advanced Diploma Plan CCMR indicators.

Response. The agency provides the following clarification. This information will be provided on the Academic Accountability Data Sources document on the Performance Reporting Resources page at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/performance-reporting-resources>.

Comment. A school district staff member commented that school districts need assistance with matching SAT/ACT data because the student provides the information to the College Board and the districts have little control over the accuracy of the reporting.

Response. The agency disagrees. The College Board and ACT, Inc. provide the agency with assessment results. School districts are not responsible for matching the data nor do they report this data for use in accountability ratings.

Comment. A school district staff member asked why dates are different for the inclusion of the Texas Success Initiative Assessment and SAT/ACT.

Response. The agency provides the following clarification. Dates vary depending on when the assessments are administered and when data files are provided to the agency.

Comment. A school district staff member requested that examples of small numbers analysis be added to Chapter 2.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to add small numbers analysis examples.

Comment. A school district staff member requested that score ranges for the Meets and Masters performance levels in the accelerated testers' SAT/ACT inclusion table be adjusted because it does not align with achievement on the STAAR® Algebra I EOC.

Response. The agency disagrees. The decision to establish a college readiness cut point was aligned to the College Board and not to outcomes based on the STAAR® Algebra I EOC. SAT/ACT include elements of Algebra I but also Geometry and Algebra II. The performance level baseline decisions were based on the existing SAT/ACT data, not in comparison to STAAR® Algebra I EOC outcomes.

Comment. A school district staff member requested that College-Level Examination Program (CLEP) results be included in accountability.

Response. The agency disagrees. The agency does not have access to CLEP outcomes. There are numerous credit-by-examination assessments available throughout the state for which standards and data-reporting are not uniform. As such, the agency cannot implement CLEP as a CCMR indicator for 2021.

Comment. The College Board and two school district staff members commented that school districts should be able to use the SAT to fulfill federal accountability requirements in all three subjects, including science. The commenters shared concerns that only allowing ACT to meet science assessment requirements could create additional hurdles for students and school districts. One school district staff member also requested that AP and international baccalaureate (IB) examinations be considered.

Response. The agency disagrees and provides the following clarification. The agency will research the feasibility of including SAT, AP, and IB next year, which will require an amendment to the state's Every Student Success Act plan and approval from the U.S. Department of Education (USDE).

Comment. A school district staff member commented that school districts and campuses should get credit for career readiness for students who completed a CTE coherent sequence.

Response. The agency disagrees. The CTE coherent sequence indicator was not included in House Bill 22, 85th Texas Legislature, 2017. The agency has provided a three-year phase-out period for school districts to transition students away from CTE coherent sequence credit toward earning an industry-based certification.

Comment. The Texas School Alliance (TSA) recommended adding a statement to Chapter 1 to read, "School Progress: Part A: Academic Growth is not calculated for 2021 (see Chapter 3)."

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to include the commenter's suggested statement.

Comment. TSA recommended striking paragraph 1, sentence 2 in Chapter 2 that read, "If that request is granted...2022 accountability cycle."

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to remove the statement identified by the commenter.

Comment. TSA recommended striking the statement in paragraph 2, sentence 1 in Chapter 2 that read, "If that request is denied, the."

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to remove the statement identified by the commenter.

Comment. Relating to Chapter 2, TSA asked how accelerated testers would be identified in the .dat files posted on the Assessment Management System this summer since there is no field titled "accelerated testers." TSA asked whether accelerated testers who do not have SAT or ACT results would be counted as non-participants or not included at all.

Response. The agency provides the following clarification. Accelerated testers data are not provided in the assessment data files. The vendor does not have the data to make these determinations. Please refer to the Accelerated Testers Student Listings released this spring and the finalized listing released in August for related data. If accelerated testers do not have SAT or ACT results, they are not included in performance calculations and are included as non-participants for participation rates.

Comment. TSA recommended listing the criteria the agency intends to use to determine "enlisting" in the Armed Forces in Chapter 2.

Response. The agency disagrees. Military enlistment is not evaluated for 2021. The agency will resume the use of the military enlistment indicator once those data are provided by the Department of Defense (DoD). As such, the DoD will make the determination for enlistment.

Comment. TSA recommended using spectrum weights (generational poverty/census block data used in calculating school finance and the Teacher Incentive Allotment formulas) to compare campuses rather than simply using "similar percentages of economically disadvantaged students, as reported in the TSDS PEIMS October snapshot."

Response. The agency disagrees. The agency may consider such an adjustment as part of the 2023 accountability reset.

Comment. An education service center staff member asked for the rationale for removing the English Language Performance Measure (ELPM) for Grades 3-8 in the Closing the Gaps Academic Achievement component and only evaluating it at the EOC level for English language arts and mathematics.

Response. The agency provides the following clarification. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify that available ELPMs will be evaluated for all STAAR® assessments.

Comment. A school district staff member requested the removal of an indent in Chapter 4.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to remove the extra indent.

Comment. A school district staff member requested that language describing the graduation rate requirements for the Closing the Gaps domain consistently note that the student group must show improvement over the class of 2015 baseline data and meet the long-term target to meet the first criteria.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to consistently note that a student group must show improvement over the class of 2015 baseline data and meet the long-term target to meet the first criteria.

Comment. A school district staff member requested that the agency clearly document the English Language Proficiency (ELP) methodology on the accountability data tables and all other reports where the 2021 ELP performance data will be reported.

Response. The agency disagrees. A similar methodology was used in 2018 when the 2017 Texas English Language Proficiency Assessment System (TELPAS) composite rating was compared to 2016, 2015, or 2014. The 2021 ELP student listings will provide TELPAS data for each year evaluated.

Comment. TSA recommended adding a statement to Chapter 4 to read, "Although TEA will not be using student growth in accountability ratings calculations, student reports will still include a STAAR progress measure of accelerated, expected or limited growth. The STAAR progress measure calculation differs slightly from past years because it measures progress across two years, from 2019 STAAR to 2021 STAAR."

Response. The agency disagrees. The student-level progress measure is outside of the scope of the proposed rulemaking.

Comment. TSA recommended adding the detailed graduation rate methodology to the Performance Targets table at the end of Chapter 4.

Response. The agency disagrees. The targets displayed are those approved by the USDE in the state's Every Student Succeeds Act (ESSA) plan. The graduation rate methodology is provided in the Graduation Rate Status section of Chapter 4.

Comment. TSA recommended adding a statement to Chapter 4 regarding the ELP component to read, "For 2021 Accountability only, students need to advance only one composite proficiency level from the prior data point, even if the prior year data point was from two or three years ago (2018 or 2019)."

Response. The agency disagrees. A similar methodology was used in 2018 when the 2017 TELPAS composite rating was compared to 2016, 2015, or 2014. A student is considered as having made progress if the student advances by at least one score of the composite rating from the prior year to the current year or the student's 2021 result is Advanced High or Basic Fluency.

Comment. TSA recommended setting ELP targets by campus type.

Response. The agency disagrees. Adjustments to Closing the Gaps student targets must be approved by the USDE via an amendment to the state's ESSA plan.

Comment. A school district staff member asked when more information on updates to the alternative education accountability (AEA) system would be available.

Response. The agency provides the following clarification. Final recommendations from the AEA Taskforce are scheduled to be implemented with the accountability system reset for release in May 2022.

Comment. Brazos River Charter School disagreed with the updated AEA eligibility requirement of 90% percent of students enrolled in Grades 6-12 rather than 50%.

Response. The agency disagrees. The AEA Taskforce has developed numerous recommendations, one of which was to increase the required Grade 6-12 enrollment requirement. This modification aligns with the original intent of AEA, which was to evaluate middle and high school campuses offering alternative instruction or programs.

Comment. The Texas Public Charter Schools Association (TPCSA) requested that open-enrollment charter schools registered for AEA in 2020 remain registered for 2021. If not possible, the TPCSA requested that TEA delay the implementation of the AEA registration status change for impacted open-enrollment charter schools until after the accountability system reset in 2023-2024.

Response. The agency disagrees. These changes are implemented at the recommendation of the AEA Taskforce. As all campuses and school districts receive a *Not Rated: Declared State of Disaster* rating in 2021, the affected campuses have more than a year to make necessary adjustments before 2022 ratings.

Comment. Brazosport Independent School District (ISD) commented that changing the comprehensive support and improvement (CSI) exit criteria from the four-year graduation rate to the six-year graduation rate for AEA campuses is unfair. Brazosport ISD asked TEA to allow AEA campuses to use the better of the four-year or six-year federal graduation rates for 2021 exit evaluation (class of 2020) and 2022 (class of 2021).

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to note that a campus, regardless of AEA status, is eligible to exit CSI status if the four-year or six-year federal graduation rate is at least 67% for two consecutive years.

Comment. A school district staff member commented that 2019 additional targeted support (ATS) status should not be used to identify Title I campuses for CSI in 2023.

Response. The agency disagrees. ESSA requires campuses identified as ATS for multiple years be escalated to CSI.

Comment. The Texas State Teachers Association (TSTA) recommended that intervention actions for targeted support and improvement (TSI), ATS, and CSI require schools to specifically include educators as participants in the creation, administration, and evaluation of improvement plans.

Response. As this comment pertains to interventions, it is outside the scope of the proposed rulemaking.

Comment. TSTA suggested the elimination of the following interventions after failure to meet exit criteria for CSI five consecutive years: restarting the school in partnership with a charter schools; converting the school to a charter school with an independent governing board; and inserting a state-appointed board of managers to oversee the entire district.

Response. As this comment pertains to interventions, it is outside the scope of the proposed rulemaking.

Comment. TSA recommended striking the reference to D ratings as unacceptable performance in the statement "While no ratings were issued in 2020 and 2021, an overall or domain rating of D

or F in 2019 and an overall or domain rating of D or F in 2022 will be considered to be consecutive."

Response. The agency disagrees. Texas Education Code, §39A.0545, specifies that multiple years of D ratings are considered unacceptable performance.

Comment. TSA commented that the table in Chapter 10 depicting CSI identification after three years of ATS identification skips 2021-2022, which creates confusion. TSA recommended the table be updated.

Response. The agency agrees and disagrees in part. The rolled-forward ATS labels for the 2021-2022 school year are not considered year 2. At adoption, the table was updated to provide clarification.

Comment. A school district staff member asked that the agency issue accountability ratings and some form of STAAR® testing in 2021.

Response. The agency disagrees that accountability ratings should be given in 2021. The agency will process and report all available data from the 2020-2021 school year but will not calculate accountability scaled scores or assign A-F ratings. Additionally, the agency clarifies that STAAR® testing occurred in 2021.

Comment. A school district staff member commented that two years of being *Not Rated* is a large separation and should break the chain of consecutive years of unacceptable ratings for intervention and sanctions.

Response. The agency disagrees. Statute does not specify that a *Not Rated* label breaks the chain of consecutive years.

Comment. A school district staff member commented that the accountability manual should be published by TEA by September 1 of each school year to which it applies so that school districts and campuses can utilize universal screeners and TEA Interim Assessments for progress monitoring.

Response. The agency disagrees. The cut points and scaling methodologies have remained unchanged since 2018 implementation. As such, school districts and campuses are aware of targets for each domain at the beginning of the school year. The accountability system relies on the most recent year of STAAR®, CCMR, and graduation data to make necessary annual adjustments to the system. Those data are not available in time for a September adoption of the manual.

Comment. TSTA commented that teachers and other education stakeholders have long agreed that the STAAR® assessments count for too much in the accountability of Texas schools and noted that statewide accountability systems across all 50 states range in sophistication and include a variety of indicators outside the scope of standardized test scores.

Response. As this comment pertains to future accountability ratings, it is outside the scope of the proposed rulemaking.

Comment. TSTA commented that the present language in the state's ESSA plan falls short by merely asking how goals were "communicated to" stakeholders and how leaders will achieve "buy in." TSTA stated that the language misses a critical opportunity under ESSA to advance education justice by collaborating with educators who know what students need to thrive. TSTA recommended that intervention actions for TSI, ATS, and CSI require schools to specifically include educators as participants

in the creation, administration, and evaluation of improvement plans.

Response. As this comment pertains to the state's ESSA plan and interventions, it is outside the scope of the proposed rule-making.

Comment. TSTA commented in opposition to the use of competitive grant applications for school improvement.

Response. As this comment pertains to grants, it is outside the scope of the proposed rulemaking.

Comment. TSTA commented that the Texas ESSA plan and accompanying accountability manual must reflect a more holistic system of accountability and support for school improvement. TSTA commented that the current plan disregards many elements that are a truer measure of school quality, such as programming and school climate, and that the current plan also falls short of providing proven and evidence-based supports for improvement, sidestepping community engagement and removing local control.

Response. As this comment pertains to future accountability systems and the state's ESSA plan, it is outside the scope of the proposed rulemaking.

Comment. TSA commented in support of a label of *Not Rated: Declared State of Disaster* for all campuses and school districts for 2021 and recommended including the not rated language in the opening paragraphs of the manual.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to include the commenter's suggestion.

Comment. TSA recommended recalculating the cut scores used to determine the A-F letter grades since the military enlistment and CTE points will no longer be included in the domain calculations.

Response. The agency disagrees. All school districts and campuses will be labeled *Not Rated: Declared State of Disaster*.

Comment. TSA recommended that TEA provide the data for all 14 student groups in the .dat file.

Response. The agency disagrees. The vendor does not have the data to make these determinations. The accountability student listings provide data on all student groups evaluated in the accountability system.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assess-

ment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(3)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(3)(L).

§97.1001. *Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2021 are based upon specific criteria and calculations, which are described in excerpted sections of the *2021 Accountability Manual* provided in this subsection. Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 368. INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (IDD) HABILITATIVE SPECIALIZED SERVICES

The Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC), Title 26, Part 1, new Chapter 368, Intellectual and Developmental Disabilities (IDD) Habilitative Specialized Services, Subchapters A through H, comprising §§368.101, 368.102, 368.201 - 368.204, 368.301, 368.302, 368.401 - 368.407, 368.501 - 368.505, 368.601, 368.602, 368.701, and 368.801.

Sections 368.101, 368.201, 368.301, 368.402, 368.403, 368.502, and 368.601 are adopted with changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 84). These rules will be republished.

Sections 368.102, 368.202 - 368.204, 368.302, 368.401, 368.404 - 368.407, 368.501, 368.503 - 368.505, 368.602, 368.701, and 368.801 are adopted without changes to the proposed text as published in the January 1, 2021, issue of the *Texas Register* (46 TexReg 84). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rules is to describe the requirements applicable to a service provider agency providing preadmission screening and resident review (PASRR) IDD habilitative specialized services (IHSS) to Medicaid-eligible nursing facility (NF) residents who are 21 years of age and older and who have been found through the PASRR process to need IHSS. PASRR is a federal requirement in 42 CFR Part 483, Subpart C. Since 2015, local intellectual and developmental disability authorities (LIDDAs) have provided certain specialized services to eligible NF residents funded by state general revenue funds. In accordance with a Medicaid state plan amendment approved by the Centers for Medicare & Medicaid Services, new Medicaid-funded services delivered as NF add-on services by service provider agencies will replace the state general revenue-funded specialized services LIDDAs currently provide.

A service provider agency is a community-based provider with experience delivering services to individuals with intellectual disabilities or developmental disabilities.

In accordance with the state plan amendment, a service provider agency is eligible to contract with HHSC to provide IHSS if the service provider agency is licensed or certified by HHSC to provide program services for the Home and Community-based Services waiver, Texas Home Living waiver, Community Living As-

sistance and Support Services waiver, or Deaf Blind with Multiple Disabilities waiver. The services the service provider agencies will be providing are behavioral support, day habilitation, independent living skills training, employment assistance, and supported employment.

The new rules also describe the roles and responsibilities of a LIDDA related to the initiation and provision of IHSS.

COMMENTS

The 31-day comment period ended February 1, 2021.

During this period, HHSC received comments regarding the proposed rules from three commenters: Disability Rights Texas, Texas Council of Community Centers, and Gulf Bend Center. None of the commenters expressed opposition to the adoption of the rules. However, each 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: All commenters voiced concerns about LIDDAs that are currently providing IHSS being excluded from the provider base. Commenters want to ensure access to a provider network statewide, including in rural areas. Commenters requested HHSC honor individual choice and continuity of care by allowing LIDDAs to provide IHSS if selected by the individual or legally authorized representative (LAR).

Response: HHSC declines to make the requested change. The state plan amendment requires that service provider agencies be licensed or certified by HHSC to provide program services for the Home and Community-based Services waiver, Texas Home Living waiver, Community Living Assistance and Support Services waiver, or Deaf Blind and Multiple Disabilities waiver. Furthermore, because most LIDDAs provide waiver services, only a handful of LIDDAs will be excluded as providers of IHSS. These LIDDAs could choose to become licensed or certified to provide waiver services.

Comment: A commenter expressed concerns that, the IHSS process outlined in rule would further increase the roles, responsibilities, and monitoring tasks of habilitation coordinators and that the current PASRR rate would not cover the costs. Commenter recommends incorporating the increased duties of IHSS into other PASRR rate discussions.

Response: HHSC declines to make changes to the rules in response to this comment. These rules do not cover rates, and rates are outside the scope of this rule project.

Comment: A commenter made a general recommendation that HHSC ensure the roles and responsibilities of habilitation coordinators for IHSS are streamlined as much as possible with habilitation coordinator's other PASRR responsibilities.

Response: HHSC declines to revise the rule in response to this comment. However, HHSC plans to share draft forms and handbooks with stakeholders prior to implementation to obtain feedback to ensure processes are efficient.

Comment: A commenter requested several changes throughout the rule to replace "calendar" with "business" days to align timelines for consistency. The commenter suggests using "business" days through the entire rule.

Response: HHSC declines to revise the rule as suggested. The term "business day" and "calendar day" are defined in rule to clarify timeframes and expectations. Changing "calendar day" to

"business day" throughout the chapter would change the amount of time allowed for various tasks.

Comment: Multiple commenters requested HHSC facilitate completion of service authorizations by allowing habilitation coordinators to sign all forms electronically.

Response: HHSC declines to make the recommended edit. HHSC accepts electronic or handwritten signatures on forms.

Comment: A commenter requested that HHSC define the term "critical incident" in §368.101(14), rather than referencing Appendix V in the IDD PASRR Handbook.

Response: HHSC agrees and has defined the term "critical incident" in §368.101(14).

Comment: Regarding the definition of "habilitation coordinator" in §368.101(20), a commenter recommended adding "IDD habilitative" before specialized services in rule language.

Response: HHSC declines to revise the rule as suggested. The habilitation coordinators are required to assist designated residents to access all appropriate specialized services, not just IHSS.

Comment: Regarding the definition of sexual abuse in §368.101(51)(C), a commenter requested that the related handbook include clarifying language regarding consensual sexual activity.

Response: HHSC declines to revise the rule in response to this comment. The definition of sexual abuse is consistent with the definition used by HHSC Provider Investigations and adopted in 26 TAC §711.13. Furthermore, the rule language regarding consensual sexual activity is substantively identical to the language used in other IDD waiver program rules. See 40 TAC §9.153(108)(C) (Home and Community-based Services waiver); 40 TAC §9.553(92)(C) (Texas Home Living waiver); 40 TAC §42.103(103)(C) (Deaf Blind with Multiple Disabilities waiver); 40 TAC §45.103(106)(C) (Community Living Assistance and Support Services waiver).

Comment: Regarding the behavioral support training described in §368.201(b)(1)(C)(iii), a commenter requested that the rule language require NF staff participation in the offered training.

Response: HHSC declines to revise the rule as suggested. NF rules are outside the scope of this rule project.

Comment: Regarding transportation to and from the day habilitation site required in §368.201(b)(2)(E)(v), a commenter suggested that HHSC clarify the responsibilities of NFs and the IHSS service provider agencies. The commenter stated that NFs are responsible for transportation.

Response: HHSC declines to revise the rule as suggested because the roles and responsibilities of NFs and service provider agencies are described elsewhere in these rules and in Chapter 554, Subchapter BB of this title (relating to Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review(PASRR)). The NF rules are outside the scope of this rule project.

Comment: Regarding the eligibility criteria in §368.202, a commenter requested HHSC ensure roles and responsibilities of HHSC and providers for service authorizations are clearly described in relevant handbooks.

Response: HHSC declines to revise the rule in response to this comment. HHSC plans to share draft forms and handbooks with

stakeholders before implementing IHSS to obtain feedback to ensure processes are efficient.

Comment: Regarding the eligibility criteria in §368.202(b), a commenter requested that the rule language include whether a denial is needed from the Texas Workforce Commission before obtaining authorization for supported employment and employment assistance services.

Response: HHSC declines to revise the rule as suggested. However, HHSC will provide guidance in the IDD PASRR Handbook so providers can determine whether services are available for a designated resident.

Comment: As proposed, §368.203(a)(1) requires the habilitation coordinator to provide the designated resident or LAR the names and contact information of all IHSS service provider agencies in the contract area no later than the initial Interdisciplinary Team (IDT) meeting. A commenter requested clarification in the guidelines or handbook that the IHSS provider list will be provided by HHSC to the LIDDAs.

Response: HHSC will provide the list of IHSS providers to the LIDDAs.

Comment: A commenter suggests adding the following language to §368.203(a)(1): "once a person who is eligible for a PASRR IHSS service accepts the service." This section requires a habilitation coordinator to provide the designated resident or LAR the names and contact information of all IHSS service provider agencies in the contract area no later than the initial IDT meeting.

Response: HHSC declines to revise the rule as suggested because the suggested revision would cause a delay in the designated resident receiving a provider list. Habilitation coordinators should discuss potential providers with interested designated residents no later than the initial IDT meeting. The designated resident would not accept the service until the initial IDT meeting.

Comment: Regarding §368.203(a)(5), which requires a habilitation coordinator to notify the service provider agency when a designated resident chooses that service provider agency, a commenter asked if only one service provider agency will be chosen or if HHSC will allow designated residents to select multiple providers for each IHSS service.

Response: A designated resident will choose only one service provider agency. The chosen service provider agency is required to provide all IHSS as stated in §368.401(b).

Comment: As proposed, §368.203(a)(5) requires habilitation coordinators to notify the chosen service provider agency and provide a copy of the habilitation service plan (HSP) and NF care plan within three business days after provider is chosen. A commenter asked HHSC to modify this timeline to allow habilitation coordinators five business days to complete this task.

Response: HHSC declines to revise the rule as suggested. HHSC carefully considered the timeframe and determined that three business days is an adequate period of time to notify the chosen service provider agency and provide a copy the HSP and NF care plan.

Comment: A commenter requested that HHSC ensure the habilitation coordinator has the required documentation from the NF in a timely manner by ensuring the relevant NF rule specifies the time a NF has to complete the required NF care plan. The commenter also requested that the assessment and care plan

be made available in the Texas Medicaid and Healthcare Partnership (TMHP).

Response: The NF rules require NFs to complete the baseline care plan within 48 hours of admitting a resident and complete the comprehensive care plan within seven days after completing the comprehensive assessment. The comprehensive assessment must be completed within 14 days of admitting a resident. See 26 TAC §554.801(2)(C)(i) and §554.802(a)(1)(A), (c)(1). Requiring the assessment and care plan to be made available in TMHP is not appropriate at this time. The IHSS processes are currently manual.

Comment: As proposed, §368.203(b) requires the service planning team (SPT) to actively involve the designated resident or the resident's LAR, to the extent possible, in choosing a service provider agency. A commenter requested HHSC specify in guidelines or handbooks the process and requirements for actively involving individuals in the decision-making process.

Response: HHSC declines to revise the rule or the handbook as suggested. Each designated resident's SPT should determine the best way to involve the designated resident or the resident's LAR in their planning and decision making.

Comment: As proposed, §368.204(c)(2) requires the service provider agency to send each assessment to the habilitation coordinator within seven calendar days of receiving the designated resident's NF care plan. A commenter suggests adding "and make each assessment available in TMHP."

Response: HHSC declines to add the requested language to the rule. IHSS processes related to service authorization are currently manual.

Comment: Regarding the habilitation coordinator's responsibilities for service initiation addressed in §368.204(d)(1) and for the plan of care addressed in §368.301, commenters requested HHSC ensure IHSS-related responsibilities, timelines, and forms are streamlined with current habilitation coordinator process to avoid unnecessary forms and timelines.

Response: HHSC declines to revise the rule in response to this comment. HHSC plans to share draft forms with stakeholders prior to implementation to obtain feedback to ensure processes are efficient.

Comment: As proposed, §368.204(d)(3) requires a habilitation coordinator to submit to HHSC the initial plan of care, including all assessments within three business days after the SPT meeting. A commenter asked HHSC to modify this timeline to allow habilitation coordinators five business days to submit the initial plan of care.

Response: HHSC declines to revise the rule as suggested. Other commenters voiced support for the three-day timeframe in §368.204(d)(3). HHSC believes that three business days should be adequate time for the habilitation coordinator to submit the initial plan of care.

Comment: Regarding the process for service initiation in §368.204, a commenter requested the process allow for assessments to be securely emailed to better facilitate service initiation.

Response: HHSC declines to revise the rule in response to this comment. The rule language does not prohibit securely emailing assessments.

Comment: Related to plan of care meetings addressed in §368.301, a commenter supports continued flexibility for conducting meetings through virtual means, not limited to disasters or other emergencies.

Response: HHSC declines to revise the rule in response to this comment. The rule language does not prohibit conducting meetings through virtual means.

Comment: A commenter objects to requiring the habilitation coordinator to complete the plan of care for IHSS services in addition to the other documents the habilitation coordinator is required to complete. The commenter states that the verbiage "plan of car" is confusing. The commenter also states that adding another document seems extreme and redundant.

Response: HHS declines to revise the rules as suggested. A plan of care will be used to request service authorization for IHSS. This form is not redundant as it captures data not previously requested in HHSC forms.

Comment: As proposed, §368.301(b) requires that a plan of care include non-PASRR services and supports to be provided during the plan year. A commenter recommends amending the language to include "priority" non-PASRR services and supports, "as identified by the SPT." The commenter requested that the rules include a definition and list describing non-PASRR services and supports.

Response: HHSC declines to revise the rule as suggested. The word "priority" is too subjective. Definitions cannot include an exhaustive list of non-PASRR services as requested. Non-PASRR services and supports should be discussed with the SPT and added to the plan of care.

Comment: A commenter suggested revisions to §368.301(b)(1) to clarify that each IHSS in the plan of care must maintain or improve skills, or slow or prevent a decline in skills. The commenter also requested that guidelines include the process to determine if a service will help the designated resident partially or fully attain, maintain, or improve a skill.

Response: HHSC agrees and has revised rule language to clarify that each IHSS must be necessary to help the designated resident attain, maintain or improve skills, or slow or prevent a decline in skills.

Comment: Related to §368.301(b)(1), this same commenter requested guidelines that include the process to determine if a service will help the designated resident partially or fully attain, maintain, or improve a skill.

Response: HHSC declines to revise the rule or guidelines to include the process for determining whether a service will help the designated resident as required by the rule. The assessment will be used to make this determination.

Comment: A commenter suggests adding "IDT" to proposed §368.302(a), which concerns the renewal of the plan of care, so that the rule references the initial IDT meeting or the annual SPT meeting.

Response: HHSC declines to revise the rule as suggested. HHSC intended to refer to the initial SPT meeting, not the initial IDT meeting. This rule defines what an SPT can do, not an IDT, which is led by the nursing facility.

Comment: A commenter suggests defining "service capacity" in §368.401(a)(1), which requires a service provider agency to serve each designated resident who selects the provider unless

enrollment has reached the provider's service capacity as defined in its contract.

Response: HHSC declines to revise the rule as suggested. Service capacity will be specific for each service provider agency based on capacity and will be identified in the provider's contract.

Comment: Regarding the provision in §368.401(a)(2) that permits HHSC to waive the requirement that a service provider agency serve each designated resident who selects the provider, a commenter requests that the rule state additional requirements or parameters to request a waiver from HHSC. Another commenter did not support a service provider agency being permitted to refuse to serve a designated resident.

Response: HHSC declines to revise the rule as suggested. HHSC expects these requests to be rare and will review them on a case-by-case basis.

Comment: As proposed, §368.402(f) requires a service provider agency to notify the NF and habilitation coordinator if the designated resident experiences any significant change in behavioral or medical condition while in the service provider agency's care. A commenter requested that the rule language clarify the appropriate forms of notification with concrete examples.

Response: HHSC declines to revise the rule as suggested. The appropriate form of notification will depend on the circumstances.

Comment: Regarding the right of designated residents to receive visitors and have privacy during visitation in §368.403(b)(6) and (7), a commenter requested adding "and in accordance with the service provider agency contract and IHSS handbook" to the rule language.

Response: HHSC declines to revise the rule as suggested because the additional language is unnecessary. The service provider agency is required to comply with its contract and the IHSS Handbook without this language being added to the rule.

Comment: Regarding the right of a designated resident to complain at any time described in §368.403(b)(15), a commenter recommended adding "ombudsman or Disability Rights Texas, Texas designated protection and advocacy agency," to rule language.

Response: HHSC agrees with the commenter and revised the rule with language that is consistent with other HHSC programs.

Comment: Regarding the requirement in §368.404(a) that a service provider agency get written consent before restricting the rights of a designated resident, a commenter suggested also requiring consent for behavior plans in this subsection.

Response: HHSC agrees with the commenter and revised the rule language in §368.201(b)(1)(C) to require consent for behavior support plans.

Comment: Regarding §368.405, which concerns the abuse, neglect, and exploitation of a designated resident, a commenter recommended including language to clarify that determinations regarding whether a designated resident has been abused, neglected, or exploited are made by relevant state agency staff and are not the responsibility of the LIDDA habilitation coordinator. The same commenter also requested rule language clarifying the service provider agency's responsibilities if NF staff are accused of abuse, neglect, or exploitation, and clarifying notification requirements.

Response: HHSC declines to revise the rule as suggested. This rule already states that HHSC will make determinations of abuse, neglect, and exploitation. In addition, HHSC believes the rule language adequately explains the service provider agency's responsibilities when an individual who is not associated with the service provider agency is accused of abuse, neglect, or exploitation and adequately explains all notification requirements.

Comment: A commenter suggested removing from proposed §368.405(d)(3) language requiring a service provider agency to avoid further traumatizing the designated resident after allegations of abuse, neglect or exploitation involving an individual service provider, staff member, volunteer, or controlling person. The commenter explained that providers are required to obtain trauma-informed care trainings routinely and are trained on strategies to avoid traumatization and re-traumatization.

Response: HHSC declines to revise the rule as suggested because the rule is consistent with language that was adopted in the waiver program rules. HHSC believes that it is important the language remain in rule and service provider agencies act in a manner that will not further traumatize an individual during an investigation.

Comment: As proposed, §368.406(c) requires a service provider agency to ensure individual service providers are not the LAR of the designated resident or related to the designated resident in anything less than a third degree by blood or a second degree by marriage. A commenter requested HHSC reconsider allowing relatives of designated residents to provide IHSS.

Response: HHSC declines to revise the rule as suggested. The state plan amendment dictates that individual service providers of employment assistance and supported employment are not the LAR or spouse of the resident. The requested change would require an amendment to the state plan amendment.

Comment: Regarding the requirement in §368.407(f)(1) that service provider agencies review final investigative reports regarding allegations of abuse, neglect and exploitation, a commenter requested that related rule provisions be included in the NF rule when NF staff is the alleged perpetrator of abuse, neglect or exploitation.

Response: NF rules are outside the scope of this rule project.

Comment: A commenter suggests that HHSC change the title of Subchapter E from "Transfers" to "Transfers and Relocations". The commenter proposes re-naming subchapter to acknowledge moving from one NF to another is not a transfer.

Response: HHSC declines to revise the subchapter title as suggested. This subchapter is related to the habilitation coordinator's responsibilities when the designated resident transfers between service provider agencies or nursing facilities, not NFs discharging and readmitting residents. The rule language does not use the term relocation.

Comment: Regarding the transfer process in §368.501, a commenter requested HHSC describe the roles and responsibilities of the habilitation coordinator with respect to data entry and authorizations.

Response: HHSC declines to revise the rule in response to this comment. Habilitation coordinator responsibilities are laid out in 26 TAC Chapter 303 and details are provided in the IDD PASRR Handbook.

Comment: A commenter suggests that HHSC change the title of §368.502 from "Transfer" to "Relocation" between NFs in the

same contract area and local service area. The commenter proposes re-naming the section to acknowledge that moving from one NF to another is not a transfer.

Response: HHSC declines to revise the rule title as suggested. This section uses the word transfer to describe a resident's movement from one NF to another. The rule language does not use the term relocation.

Comment: Regarding the requirement in §368.501(a)(2) that the habilitation coordinator provide a list of all service provider agencies in the contract area of the designated resident's NF, a commenter requested clarification that the IHSS contract area would overlap with the current IDD waiver contract areas.

Response: HHSC declines to revise the rule to state that the IHSS contract areas are the same as the IDD waiver contract areas. The IDD waivers do not all use the same contract areas.

Comment: A commenter suggests amending §368.501(d) to change the required meeting to facilitate a transfer between service provider agencies from a "transfer meeting" to an "SPT meeting." The commenter states that this revision to the rule language is consistent with the handbook.

Response: HHSC declines to revise the rule as suggested. A transfer meeting is not the same as an SPT meeting. The IDD PASRR handbook will be updated to reflect the new rules related to IHSS.

Comment: A commenter suggests removing the requirement to "develop a transfer plan of care" from §368.501(d)(2). The commenter believes that updating the HSP should suffice.

Response: HHSC declines to revise the rule as suggested. HHSC disagrees and believes a transfer plan of care is necessary to ensure all necessary IHSS units are transferred to the receiving service provider agency and continuity of care is maintained.

Comment: A commenter suggests removing §368.501(e), which permits the habilitation coordinator to invite other parties to the transfer meeting as requested or approved by the designated resident or LAR. The commenter stated that the handbook details the process for SPT meeting participation, so it is not needed in rule.

Response: HHSC declines to revise the rule as suggested. This provision relates to a transfer meeting, not an SPT meeting. HHSC believes this information is needed in rule to clarify who is permitted to be invited to transfer meetings.

Comment: A commenter suggests deleting §368.501(f)(1) and revising the IDD PASRR handbook to include "revising the HSP because the service provider agency changes" as it applies to the HSP and Individual Profile.

Response: HHSC declines to revise the rule and the handbook as suggested. A transfer plan of care is required.

Comment: Regarding the transfers covered in §368.502 - §368.505, a commenter requested that HHSC discuss transfers with stakeholders to ensure processes, timelines, meetings, and forms are streamlined as much as possible.

Response: HHSC declines to revise the rule in response to this comment. HHSC plans to share draft forms and handbooks with stakeholders prior to implementing IHSS to obtain feedback to ensure processes are efficient.

Comment: A commenter suggests amending Subchapter E relating to transfers by combining §368.502 through §368.505 and re-naming this section, "Relocation to a Different Nursing Facility."

Response: HHSC declines to revise the subchapter as suggested. HHSC believes this subchapter's requirements are needed in rule to clarify responsibilities in different scenarios for transfers between service provider agencies.

Comment: A commenter suggests amending Subchapter E, relating to transfers by combining §368.502 through §368.505 and re-naming this section, "Relocation to a Different Nursing Facility." The commenter further suggests that the section created read as follows: "Upon receipt of the PE alerting to a NF admission, the newly assigned habilitation coordinator follows the procedures in §368.203 of this rule for provider selection; and §368.301 for plan of care."

Response: HHSC declines to revise the rule as suggested. HHSC believes this subchapter's requirements are needed in rule to clarify responsibilities in different scenarios for transfers between service provider agencies.

Comment: A commenter suggests removing "the initial" preceding SPT meetings from proposed §368.502(b)(1) related to the habilitation coordinator's responsibility to ensure the service provider agency is invited to the SPT meeting following the transfer.

Response: HHSC agrees and revised the rule as suggested to clarify the habilitation coordinator's responsibility to ensure the service provider agency is invited to the SPT meeting related to the transfer.

Comment: A commenter requests clarification regarding who is responsible for inviting participants to the initial IDT when an individual relocates to a different NF.

Response: HHSC declines to revise the rule in response to this comment. This rule defines what an SPT can do, not an IDT, which is led by the NF. NF rules are outside the scope of this rule project.

Comment: As proposed, §368.504(a)(1) requires the habilitation coordinator to notify a receiving LIDDA within three business days after learning a designated resident will move or has moved to a new NF in the LIDDA's local service area. A commenter asked HHSC to modify this timeline to allow habilitation coordinators five business days to complete the notification.

Response: HHSC declines to revise the rule as suggested. Three business days should be adequate time for the habilitation coordinator to complete the notification.

Comment: A commenter suggests that HHSC change the title of §368.601 from "Termination and Suspension of IHSS" to "Suspension and Termination of IHSS."

Response: HHSC agrees and has revised title as suggested to align with the rule language and subchapter title.

Comment: A commenter suggests adding "the designated resident has a change in health condition that temporarily prohibits participation in IHSS" to proposed §368.601(a) to include another reason a designated resident could be suspended from IHSS.

Response: HHSC agrees and has revised the rule language as suggested to include suspension of IHSS when a designated

resident has a change in health condition that temporarily prohibits participation.

Comment: Two commenters expressed concerns regarding the reasons HHSC may terminate a designated resident's IHSS. As proposed, §368.601(b)(2) states that HHSC may terminate IHSS if the designated resident loses Medicaid eligibility for more than 90 days. One commenter wanted to confirm that this provision is consistent with state policy for habilitation coordination and other IDD waiver programs. As proposed, §368.601(b)(4) states HHSC may terminate IHSS if the designated resident exhibits a persistent and prolonged pattern of failing to comply with IHSS participation requirements. Proposed §368.601(c) describes the IHSS participation requirements with which a designated resident or LAR must comply. One commenter opposes termination of IHSS if it is perceived that the designated resident, LAR, or actively involved person is not complying or is not cooperating. In addition, a commenter suggested that HHSC revise §368.601(e), which concerns the process for terminating IHSS for a designated resident's or LAR's failure to comply with requirements, to require an SPT meeting to discuss challenges with the designated resident's or LAR's compliance.

Response: HHSC declines to revise the rules in response to these comments. A NF resident must be Medicaid-eligible to receive any specialized services under the Medicaid program. A designated resident will be able to request Medicaid-funded IHSS again if Medicaid eligibility is reinstated. In addition, HHSC believes that it needs the ability to terminate IHSS when continuing to attempt to provide the services does not serve a purpose or puts the individual service provider, the designated resident, or others in danger. HHSC expects to terminate IHSS for a designated resident's or LAR's failure to comply with requirements infrequently. A designated resident whose IHSS are terminated has the right to a fair hearing. HHSC agrees that the SPT should discuss all terminations thoroughly before submitting a request for termination. HHSC believes that complying with §368.601(e)(2), which requires the SPT to ensure that its failures are not causing the designated resident's or LAR's inability to meet the participation requirements, requires the SPT to discuss designated resident's or LAR's inability to meet the participation requirements. HHSC will provide clarification of this requirement in the IDD PASRR Handbook.

Comment: A commenter suggests removing the requirement in §368.601(d) that the service provider agency develop a written policy describing the process it will follow to address challenges related to the designated resident or LAR's participation in the program and making a related change to the documentation requirements in §368.601(e).

Response: HHSC declines to revise the rule language as suggested. HHSC wants service provider agencies to develop policies and processes regarding challenges that may arise related to a designated resident's participation in the IHSS program.

Comment: A commenter proposes changing §368.601(e) so that it refers to the "noncooperation described in subsection (b)(4) of this section." As proposed, §368.601(e) requires the service provider agency and LIDDA to provide documentation when requesting to terminate a designated resident's IHSS for "the reason described in subsection (b)(4) of this section."

Response: HHSC declines to revise the rule language as suggested. Subsection (b)(4) is not solely about non-cooperation. The current rule language is more accurate than the suggested language.

HHSC also made changes to §368.101(38) and (39) to update TAC references. Changes were made to §368.402(d) to align this section with other IDD waiver programs. A minor editorial change was made to §368.403(b)(12) to correct punctuation.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §368.101, §368.102

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§368.101. Definitions.

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

- (1) Abuse--
 - (A) physical abuse;
 - (B) sexual abuse; or
 - (C) verbal or emotional abuse.
- (2) Actively involved person--An individual who has significant, ongoing, and supportive involvement with a designated resident, as determined by the SPT based on the individual's:
 - (A) observed interactions with the designated resident;
 - (B) availability to the designated resident for assistance or support when needed; and
 - (C) knowledge of, sensitivity to, and advocacy for the designated resident's needs, preferences, values, and beliefs.
- (3) Acute care hospital--A health care facility in which an individual receives short-term treatment for a severe physical injury or episode of physical illness, an urgent medical condition, or recovery from surgery and:
 - (A) may include a long-term acute care hospital, an emergency room within an acute care hospital, or an inpatient rehabilitation hospital; and
 - (B) does not include a stand-alone psychiatric hospital or a psychiatric hospital within an acute care hospital.
- (4) Alleged perpetrator--An individual alleged to have committed an act of abuse, neglect, or exploitation of a designated resident.
- (5) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).
- (6) Calendar day--Any day, including weekends and holidays.
- (7) CFR--Code of Federal Regulations.
- (8) Chemical restraint--A medication used to control a designated resident's behavior or to restrict the designated resident's free-

dom of movement that is not a standard treatment for the designated resident's medical or psychological condition.

(9) CMS--Centers for Medicare & Medicaid Services.

(10) Competitive employment--Employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and that pays a designated resident:

(A) at or above minimum wage; and

(B) not less than the customary wage and level of benefits paid by an employer to individuals who do not have disabilities performing the same or similar work.

(11) Contract--A written agreement between HHSC and a service provider agency that obligates the service provider agency to provide a service for a designated resident in exchange for payment from HHSC.

(12) Contract area--A geographic area composed of one or more Texas counties as identified in the contract to be served by a service provider agency.

(13) Controlling person--An individual who:

(A) has a controlling ownership interest in a service provider agency;

(B) is a managing employee of a service provider agency;

(C) has been delegated the authority to obligate or act on behalf of a service provider agency;

(D) is an officer or director of a corporation that is a service provider agency;

(E) is a partner in a partnership that is a service provider agency;

(F) is a member or manager in a limited liability company that is a service provider agency;

(G) is a trustee or trust manager of a trust that is a service provider agency;

(H) because of a personal, familial, or other relationship with a service provider agency, is in a position of actual control or authority with respect to the service provider agency, regardless of the individual's title.

(14) Critical incident--An event that:

(A) involves a designated resident;

(B) occurs during the provision of IHSS; and

(C) may involve:

(i) a serious injury;

(ii) a medication error;

(iii) a restraint;

(iv) an emergency room visit, hospitalization, or call to 911 for a medical or psychiatric emergency;

(v) an arrest;

(vi) an unauthorized departure;

(vii) an allegation or confirmation of abuse, neglect, or exploitation; or

(viii) a death.

(15) Day Activity and Health Services program--A program defined in Texas Human Resources Code §103.003(2).

(16) DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in 42 CFR §435.1010.

(17) Designated resident--An individual:

(A) whose PE or resident review is positive for ID or DD;

(B) who is at least 21 years of age;

(C) who is a Medicaid recipient; and

(D) who is a resident or has transitioned to the community from a NF within the previous 365 days.

(18) DFPS--The Texas Department of Family and Protective Services.

(19) Exploitation--The illegal or improper act or process of using, or attempting to use, a designated resident or the resources of a designated resident for monetary or personal benefit, profit, or gain.

(20) Habilitation coordination--Assistance for a designated resident residing in a NF to access appropriate specialized services necessary to achieve a quality of life and level of community participation acceptable to the designated resident and LAR.

(21) Habilitation coordinator--An employee of a LIDDA who provides habilitation coordination.

(22) HHSC--The Texas Health and Human Services Commission.

(23) HSP--Habilitation service plan, as defined in §303.102 of this title (relating to Definitions).

(24) ID--Intellectual disability, as defined in 42 CFR §483.102(b)(3)(i).

(25) IDD--Intellectual and developmental disability.

(26) IDD PASRR Handbook--Intellectual and Developmental Disability Preadmission Screening and Resident Review Handbook.

(27) IDT--Interdisciplinary team, as defined in §303.102 of this title.

(28) IHSS--IDD habilitative specialized services, described in §368.201 of this chapter (relating to Description of IHSS).

(29) Individual service provider--An individual, who may be an employee or contractor of the service provider agency, who directly provides an IHSS for a designated resident.

(30) Initial plan of care--The first plan of care for a designated resident developed after an initial IDT meeting.

(31) LAR--Legally authorized representative. An individual authorized by law to act on behalf of a designated resident about a matter described in this chapter and may include the legal guardian or surrogate decision maker.

(32) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC, in accordance with Texas Health and Safety Code §533A.035.

(33) Local service area--A geographic area, composed of one or more Texas counties as identified in the LIDDA's performance contract to be served by a LIDDA.

(34) Mechanical restraint--A mechanical device, material, or equipment used to control a designated resident's behavior by restricting the ability of the designated resident to freely move part or all of the designated resident's body.

(35) MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(36) Neglect--A negligent act or omission that caused physical or emotional injury or death to a designated resident or placed a designated resident at risk of physical or emotional injury or death.

(37) NF--Nursing facility. A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code Chapter 242.

(38) NF baseline care plan--A baseline care plan developed in accordance with 26 TAC §554.802(a) (relating to Comprehensive Person-Centered Care Planning).

(39) NF comprehensive care plan--A comprehensive care plan, defined in 26 TAC §554.2703(3) (relating to Definitions).

(40) PASRR--Preadmission screening and resident review. A federal requirement in 42 CFR Part 483, Subpart C.

(41) PE--PASRR level II evaluation. A face-to-face evaluation:

(A) of an individual seeking admission to a NF who is suspected of having MI, ID, or DD; and

(B) performed by a LIDDA, local mental health authority, or local behavioral health authority to determine if the individual has MI, ID, or DD and, if so, to:

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

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

(iii) identify alternate placement options.

(42) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to a designated resident or placed a designated resident at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a designated resident;

(C) the use of a restraint on a designated resident not in compliance with federal and state laws and rules; or

(D) seclusion.

(43) Physical restraint--Any manual method used to control a designated resident's behavior, except for physical guidance or prompting of brief duration that a designated resident does not resist, that restricts:

(A) the free movement or normal functioning of all or a part of the designated resident's body; or

(B) normal access by a designated resident to a portion of the designated resident's body.

(44) Plan of care--A written plan that includes:

(A) the IHSS required by the NF baseline or comprehensive care plan;

(B) the frequency, amount, and duration of each IHSS to be provided for the designated resident during a plan year; and

(C) the services and supports to be provided for the designated resident through resources other than PASRR.

(45) Plan year--A 12-month period starting on the date of the initial or annual IDT meeting. A revised or transfer plan of care does not change the begin or end date of a plan year.

(46) Renewal plan of care--A plan of care developed for a designated resident in accordance with §368.302(a) of this chapter (relating to Renewal and Revision of a Plan of Care).

(47) Restraint--Any of the following:

(A) a physical restraint;

(B) a mechanical restraint; or

(C) a chemical restraint.

(48) Revised plan of care--An initial or renewal plan of care that is revised during a plan year in accordance with §368.302(b) of this chapter to add a new IHSS or change the frequency, amount, or duration of an existing IHSS.

(49) Seclusion--The involuntary placement of a designated resident alone in an area from which the designated resident is prevented from leaving.

(50) Service provider agency--An entity that has a contract with HHSC to provide IHSS for a designated resident.

(51) Sexual abuse--Any of the following:

(A) sexual exploitation of a designated resident;

(B) non-consensual or unwelcomed sexual activity with a designated resident; or

(C) consensual sexual activity between a designated resident and an individual service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult designated resident existed before the individual service provider, staff member, volunteer, or controlling person became an individual service provider, staff member, volunteer, or controlling person.

(52) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(53) Sexual exploitation--A pattern, practice, or scheme of conduct against a designated resident that can reasonably be construed as being for the purposes of sexual arousal or gratification of any individual:

(A) which may include sexual contact; and

(B) does not include obtaining information about a designated resident's sexual history within standard accepted clinical practice.

(54) SPT--Service planning team, as defined in §303.102 of this title.

(55) Staff member--An employee or contractor of a service provider agency.

(56) Surrogate decision maker--An actively involved person who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent to medical treatment on behalf of the designated resident.

(57) TAC--Texas Administrative Code.

(58) TMHP--Texas Medicaid and Healthcare Partnership.

(59) Transfer plan of care--An initial or renewal plan of care that is revised during a plan year in accordance with §368.501 of this chapter (relating to Transfer between Service Provider Agencies) to change the service provider agency selected by the designated resident or LAR.

(60) Transition plan--A plan, defined in §303.102 of this title.

(61) Vendor hold--A temporary suspension of payments that are due to a service provider agency under a contract.

(62) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade a designated resident; or

(ii) threaten a designated resident with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the designated resident; or

(ii) is of such a serious nature that a reasonable individual would consider it harmful or a cause of distress.

(63) Volunteer--An individual who works for a service provider agency without compensation, other than reimbursement for actual expenses.

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SUBCHAPTER B. SERVICES DESCRIPTION AND INITIATION

26 TAC §§368.201 - 368.204

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§368.201. Description of IHSS.

(a) IHSS are Medicaid state plan services that are authorized by HHSC prior to delivery.

(b) IHSS listed in this subsection are selected for inclusion in a designated resident's plan of care to help the designated resident partially or fully attain, maintain, improve, or slow or prevent a decline in skills that were not fully acquired because of a congenital, genetic, or early acquired health condition.

(1) Behavioral support:

(A) is assistance provided for a designated resident to increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with the designated resident's interpersonal relationships across all service and social settings;

(B) is delivered in the NF or in a community setting; and

(C) consists of:

(i) assessing the behaviors to be targeted in an appropriate behavior support plan and analyzing those assessment findings;

(ii) developing and getting the designated resident's or LAR's written consent to an individualized behavior support plan that reduces or eliminates the target behaviors, assisting the designated resident in achieving the outcomes identified in the HSP;

(iii) training and consulting with the LAR, family members, NF staff, other support providers, and the designated resident about the purpose, objectives, and methods of the behavior support plan;

(iv) documenting and implementing the behavior support plan or revisions to the behavior support plan;

(v) monitoring and evaluating the success of the behavior support plan implementation;

(vi) revising the behavior support plan as necessary; and

(vii) participating in SPT and IDT meetings.

(2) Day habilitation:

(A) is assistance provided for a designated resident to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to successfully and actively participate in all service and social settings;

(B) is delivered in a setting other than the designated resident's NF;

(C) does not include services provided under the Day Activity and Health Services program;

(D) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 CFR §483.24; and

(E) consists of:

(i) individualized activities consistent with achieving the outcomes identified in a designated resident's HSP to attain, learn, maintain, or improve skills;

(ii) activities necessary to reinforce therapeutic outcomes targeted by other support providers and other specialized services;

(iii) services in a group setting at a location other than a designated resident's NF for up to five days per week, six hours per day, on a regularly scheduled basis;

(iv) personal assistance for a designated resident who cannot manage personal care needs during the day habilitation activity;

(v) transportation between the NF and the day habilitation site, as well as during the day habilitation activity necessary for a designated resident's participation in day habilitation activities; and

(vi) participating in SPT and IDT meetings.

(3) Employment assistance:

(A) is assistance provided for a designated resident who requires intensive help locating competitive employment in the community; and

(B) consists of:

(i) identifying a designated resident's employment preferences, job skills, and requirements for a work setting and work conditions;

(ii) locating prospective employers offering employment compatible with a designated resident's identified preferences, skills, and requirements;

(iii) contacting prospective employers on a designated resident's behalf and negotiating the designated resident's employment;

(iv) transporting a designated resident between the NF and the site where employment assistance services are provided and as necessary to help the designated resident locate competitive employment in the community; and

(v) participating in SPT and IDT meetings.

(4) Independent living skills training:

(A) is assistance provided for a designated resident that is consistent with the designated resident's HSP;

(B) is provided in the designated resident's NF or in a community setting;

(C) includes expanded interactions, skills training activities, and programs of greater intensity or frequency beyond those a NF is required to provide by 42 CFR §483.24; and

(D) consists of:

(i) habilitation and support activities that foster improvement of or facilitate a designated resident's ability to attain, learn, maintain, or improve functional living skills and other daily living activities;

(ii) activities that help preserve the designated resident's bond with family members;

(iii) activities that foster inclusion in community activities generally attended by people without disabilities;

(iv) transportation to facilitate a designated resident's employment opportunities and participation in community activities, and between the designated resident's NF and a community setting; and

(v) participating in SPT and IDT meetings.

(5) Supported employment:

(A) is assistance provided for a designated resident:

(i) who requires intensive, ongoing support to be self-employed, work from the designated resident's residence, or work in an integrated community setting at which people without disabilities are employed; and

(ii) to sustain competitive employment in an integrated community setting; and

(B) consists of:

(i) making employment adaptations, supervising, and providing training related to the designated resident's assessed needs;

(ii) transporting the designated resident between the NF and the site where the supported employment services are provided and as necessary to support the designated resident to be self-employed, work from the designated resident's residence, or work in an integrated community setting; and

(iii) participating in SPT and IDT meetings.

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SUBCHAPTER C. SERVICE AUTHORIZATIONS

26 TAC §368.301, §368.302

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§368.301. *Plan of Care.*

(a) A plan of care must be developed for each designated resident in accordance with §368.204 of this chapter (relating to Process for Service Initiation) and reviewed and revised for each designated resident whenever the designated resident's needs for services and supports change, but no less than annually, in accordance with §368.302 of this subchapter (relating to Renewal and Revision of a Plan of Care).

(b) A plan of care must specify the frequency, amount, and duration of each IHSS to be provided for a designated resident, as well as non-PASRR services and supports to be provided during the plan year. Each service in the plan of care must:

(1) be necessary to help the designated resident partially or fully attain, maintain or improve skills, or slow or prevent a decline in skills;

(2) not be available for the designated resident through any other source, including other state plan services, governmental programs, private insurance, or other resources; and

(3) be supported by at least one outcome in the HSP as necessary to enable community integration and maximize independence.

(c) Before submission to HHSC, the required SPT members must sign and date a designated resident's plan of care, indicating agreement that the services recommended in the plan of care meet the requirements of subsection (b) of this section and will be delivered by the service provider agency.

(d) HHSC reviews a submitted initial, revised, or renewal plan of care and authorizes or denies the IHSS on the plan of care.

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SUBCHAPTER D. SERVICE PROVIDER AGENCY REQUIREMENTS

26 TAC §§368.401 - 368.407

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§368.402. *Service Provider Agency Responsibilities.*

(a) The service provider agency must comply with:

(1) all applicable state and federal laws and rules; and

(2) HHSC Information Letters and HHSC Provider Letters regarding PASRR found on the HHSC website.

(b) The service provider agency must comply with §303.602 of this title (relating to Service Planning Team Responsibilities Related to Specialized Services).

(c) At least one individual service provider or representative from the service provider agency must participate in a designated resident's SPT meetings.

(d) The service provider agency must ensure that a designated resident's progress or lack of progress toward achieving an identified outcome is accurately and consistently documented in observable or measurable terms in accordance with the IDD Habilitative Specialized Services Billing Guidelines, and that such documentation is provided to the habilitation coordinator as requested.

(e) The service provider agency must inform the habilitation coordinator and NF within one business day of a circumstance or event that occurs in a designated resident's life or a change to a designated resident's condition that may affect the provision of services for the designated resident.

(f) If the designated resident experiences any significant change in behavioral or medical condition while in the service provider agency's care, the service provider agency must notify:

(1) the NF immediately; and

(2) the habilitation coordinator within one business day.

(g) The service provider agency must promote the independence and community integration of designated residents receiving IHSS.

(h) The service provider agency, its staff members, and individual service providers must cooperate with LIDDA and NF staff.

(i) The service provider agency must maintain a separate record for each designated resident served. The designated resident's record must include:

(1) a copy of the current HSP and individual profile form;

(2) a copy of the current plan of care;

(3) an implementation plan for each IHSS that appears on the plan of care;

(4) a current assessment for each IHSS on the plan of care;

(5) a copy of the NF baseline or comprehensive care plan obtained from the habilitation coordinator, whichever is most current; and

(6) documentation that describes:

(A) the designated resident's progress or lack of progress toward achieving the outcomes and objectives identified in the implementation plan; and

(B) any changes to a designated resident's personal goals, condition, abilities, or needs; and

(7) a behavior support plan, if one has been developed.

(j) The service provider agency must comply with applicable federal and state laws and rules regarding confidentiality of information regarding a designated resident.

(k) The service provider agency must ensure that all billing is correct and documented in accordance with the IDD Habilitative Specialized Services Billing Guidelines.

§368.403. *Rights of Designated Residents.*

(a) The service provider agency must assist the designated resident or LAR in exercising the same rights and responsibilities exercised by people without disabilities.

(b) The service provider agency must protect and promote the following rights of the designated resident:

(1) to be informed of requirements for participation as described in §368.601(c) of this chapter (relating to Termination and Suspension of IHSS);

(2) to be informed of the designated resident's plan of care and implementation plan, including any restrictions affecting the designated resident's rights;

(3) to participate in decisions and be informed of the reasons for decisions regarding plans for initiation, transfer, denial, suspension, or termination of IHSS;

(4) to be informed about the designated resident's own physical and behavioral health and related progress;

(5) to be informed of the name and qualifications of any individual providing services for the designated resident and to choose among various available individual service providers;

(6) to receive visitors without prior notice to the service provider agency unless such rights are contraindicated by the designated resident's rights or the rights of others;

(7) to have privacy in visitation with family and other visitors;

(8) to make and receive telephone calls;

(9) to attend religious activities of choice;

(10) to participate in developing a transition plan that addresses assistance for the designated resident after he or she leaves the NF;

(11) to be free from the use of unauthorized restraints;

(12) to have a personalized plan of care and implementation plan, based on individualized assessments, that meet the designated resident's needs and abilities and enhance the designated resident's strengths;

(13) to help decide what the implementation plan will be;

(14) to be informed as to the progress or lack of progress being made in the execution of the implementation plan;

(15) to complain at any time to a staff member, individual service provider, volunteer, controlling person, ombudsman or a representative of the designated protection and advocacy system in the state for individuals with mental illness or individuals with IDD;

(16) to receive appropriate support and encouragement from a staff member, individual service provider, volunteer, or controlling person if the designated resident dislikes or disagrees with the services being rendered or thinks that his or her rights are being violated;

(17) to be free from abuse, neglect, or exploitation;

(18) to have service providers who are responsive to the designated resident;

(19) to have privacy during services and care of personal needs;

(20) to communicate, associate, and meet privately with individuals of his or her choice, unless this violates the rights of another individual;

(21) to participate in social, recreational, and community group activities;

(22) to have his or her LAR involved in activities, including:

(A) being informed of all rights and responsibilities when the designated resident is receiving IHSS from the service provider agency, as well as any changes in rights or responsibilities before they become effective;

(B) participating in the planning for IHSS; and

(C) advocating for all rights of the designated resident;

(23) to be informed of the designated resident's option to transfer to other service provider agencies as chosen by the designated resident or LAR as often as desired;

(24) to complain to HHSC when the service provider agency's resolution of a complaint is unsatisfactory to the designated resident or LAR, and to be informed of the HHSC Complaint and Incident Intake telephone number to initiate complaints; and

(25) to be free from the use of seclusion.

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SUBCHAPTER E. TRANSFERS

26 TAC §§368.501 - 368.505

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§368.502. Transfer between Nursing Facilities in the Same Contract Area and Local Service Area.

(a) When a designated resident moves from one NF to another NF within the same contract area and the same local service area without an intervening hospital stay, the habilitation coordinator must determine whether the designated resident, or LAR on the designated resident's behalf, wants to select a new service provider agency or continue receiving IHSS from the current service provider agency.

(b) If the designated resident or LAR elects to have IHSS delivered by the current service provider agency:

(1) the habilitation coordinator must document the designated resident's or LAR's choice and ensure the service provider agency is invited to the SPT meeting;

(2) the designated resident may continue receiving, or suspend, any authorized IHSS that was delivered at the transferring NF until:

(A) the receiving NF has convened the initial IDT meeting;

(B) the IHSS assessments have been reviewed in accordance with §368.302 of this chapter (relating to Renewal and Revision of a Plan of Care); and

(C) HHSC has authorized the IHSS to be delivered at the receiving NF; and

(3) at the initial IDT meeting:

(A) the IDT reviews the designated resident's IHSS;

(B) the IDT may request a new assessment for any IHSS;

(C) the habilitation coordinator develops an initial plan of care and obtains signatures from the required parties; and

(D) the habilitation coordinator revises the HSP as necessary.

(c) If the designated resident chooses to select a new service provider agency:

(1) the habilitation coordinator and new service provider agency must comply with §368.203 of this chapter (relating to Process for Provider Selection) and §368.204 of this chapter (relating to Process for Service Initiation);

(2) the new service provider agency must ensure IHSS are not delivered until HHSC has authorized the IHSS on the plan of care; and

(3) the previous service provider agency must respond to the habilitation coordinator's requests for information or documentation related to the designated resident's IHSS within three business days of the request.

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SUBCHAPTER F. SERVICE SUSPENSION, TERMINATION, OR DENIAL

26 TAC §368.601, §368.602

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the

Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

§368.601. *Suspension and Termination of IHSS.*

(a) A designated resident's IHSS are suspended if:

(1) the designated resident is admitted to an acute care hospital for fewer than 30 days and is returning to the same NF;

(2) the designated resident loses Medicaid eligibility;

(3) the designated resident or LAR requests that IHSS be suspended when transferring from one NF to another NF without an intervening hospital stay; or

(4) the designated resident has a change in health condition that temporarily prohibits participation in IHSS.

(b) HHSC may terminate one or more of a designated resident's IHSS if:

(1) the designated resident no longer meets the eligibility criteria specified in §368.202 of this chapter (relating to Eligibility Criteria);

(2) the designated resident loses Medicaid eligibility for more than 90 days;

(3) the designated resident or LAR requests that IHSS be terminated; or

(4) the designated resident exhibits a persistent and prolonged pattern of failing to comply with the requirements described in subsection (c) of this section.

(c) A designated resident or LAR must comply with the following participation requirements in the delivery of IHSS:

(1) participating on the SPT to:

(A) develop an initial plan of care as described in §368.204 of this chapter (relating to Process for Service Initiation); and

(B) renew and revise the plan of care as described in §368.302 of this chapter (relating to Renewal and Revision of a Plan of Care);

(2) reviewing, agreeing to, signing, and dating a plan of care in accordance with §368.301 of this chapter (relating to Plan of Care);

(3) cooperating with the service provider agency and habilitation coordinator in the delivery of IHSS listed on the designated resident's plan of care;

(4) cooperating with the service provider agency and habilitation coordinator to ensure progress toward achieving the outcomes, goals, and objectives described in the HSP and implementation plan;

(5) not engaging in illegal behavior in the presence of the habilitation coordinator, individual service provider, or a staff member, volunteer, or controlling person of the service provider agency;

(6) not repeatedly acting in a manner that is threatening to the health and safety of the individual service provider or a staff member, volunteer, or controlling person of the service provider agency;

(7) not exhibiting behavior that places the health and safety of the individual service provider or a staff member, volunteer, or controlling person of the service provider agency in immediate jeopardy; and

(8) not knowingly initiating or participating in fraudulent health care practices.

(d) The service provider agency must develop a written policy that describes the process the service provider agency will follow to address challenges related to the designated resident's or LAR's participation in the program.

(e) When requesting to terminate a designated resident's IHSS for the reason described in subsection (b)(4) of this section, the service provider agency and LIDDA must provide documentation demonstrating the service provider agency and LIDDA have followed the written policy required by subsection (d) of this section and made every attempt to:

(1) engage the designated resident or LAR in meeting the participation requirements; and

(2) ensure the designated resident's or LAR's inability to meet the participation requirements is not due to a failure of the designated resident's SPT.

(f) The LIDDA and service provider agency must notify each other immediately if IHSS are suspended or terminated.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3135



SUBCHAPTER G. VENDOR PAYMENT

26 TAC §368.701

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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SUBCHAPTER H LIDDA REQUIREMENTS

26 TAC §368.801

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 25, 2021, adopted amendments to 31 TAC §§65.3, 65.11, 65.19, 65.30, 65.32, 65.40, 65.42, 65.46, 65.64, and 65.66, concerning the Statewide Hunting Proclamation. Section 65.3 is adopted with changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1221). This section will be republished. Sections 65.11, 65.19, 65.30, 65.32, 65.40, 65.42, 65.46, 65.64, and 65.66 are adopted without changes and will not be republished.

The change to §65.3, concerning Definitions, alters the definition of "muzzleloader" to clarify that the term applies to any firearm designed such that the projectile or bullet and the propellant can be loaded only through the muzzle. As proposed, the amendment would have legalized the use of firearms in which the projectile is loaded through the muzzle but the propellant is contained in a cartridge loaded through the breech. Upon deliberation, the commission determined that such firearms where powder is loaded through the breech are not consistent with conventional conceptions of muzzleloaders and directed staff to clarify the definition of muzzleloaders to reflect that all components of the ammunition must be loaded through the muzzle. The amendment is meant to remove any ambiguity as to the meaning of the term.

The amendment to §65.3, concerning Definitions, adds crossbows to the definition of lawful archery equipment. The commission many years ago legalized the use of crossbows for the take of game animals and turkey, but at that time crossbows were not included in the definition of lawful archery equipment. The department believes that crossbows should be included in definition of lawful archery equipment, which allows regulatory language in §§65.11, 65.32, 65.42, and 65.64 to be simplified.

The amendment also alters the definition of "muzzleloader" as discussed previously in this preamble.

The amendment to §65.11, concerning Lawful Means, makes conforming changes to current language to reflect the consequences of the amendment to §65.3 that designates crossbows as lawful archery equipment.

The amendment to §65.19, concerning Hunting Deer with Dogs, allows the use of not more than two dogs to trail wounded deer in all counties, but requires dogs to be leashed in certain counties where current rules prohibit the use of dogs to trail wounded deer. In 1990, the department promulgated rules prohibiting the use of dogs to trail wounded deer in 34 counties in East Texas. The rulemaking was necessary because the department determined that dogs were being used unlawfully to hunt deer, which was causing depletion of the resource and in the process denying others an equitable and reasonable privilege to hunt deer. In 2000, the department determined that the practice of using dogs to hunt deer had declined to the point of being nonexistent in Bowie, Camp, Fannin, Franklin, Lamar, Morris, Red River, Rockwall, Titus, and Wood counties and those counties were removed from the list of counties where the use of dogs to trail wounded deer was prohibited. In 2005, the department removed Hunt and Washington counties from the list, and in 2013, removed Harris, Harrison, Houston, Jefferson, Liberty, Montgomery, Panola, Polk, Rusk, San Jacinto, Trinity, and Walker counties. The department has determined that the practice of hunting deer with dogs is no longer a resource threat anywhere, but remains concerned that a complete removal of regulatory provisions designed to thwart that practice in certain counties could result in a resurgence of the activity. Therefore, the amendment allows not more than two dogs to be used to trail wounded deer in all counties in Texas, but in Jasper, Newton, Sabine, and San Augustine counties, a person using a dog to trail a wounded deer is required to keep dogs on a leash held by a person at all times the dog is used to trail a wounded deer.

The amendment to §65.30, concerning Pronghorn Antelope Permit, alters the title of the section, conforms internal references accordingly, and removes language regarding the department's experimental pronghorn season. In a previous rulemaking, the department defined "pronghorn" as "pronghorn

antelope" for purposes of brevity, clarity, and accuracy; the amendment conforms the title of the section and internal references accordingly. In the amendment to §65.40 contained in this rulemaking, the department eliminates the experimental pronghorn harvest strategy implemented in 2014 and increases the length of pronghorn season, from nine days to 16 days. The experimental season was implemented in response to increasing populations in portions of the Panhandle and concomitant impacts on department resources associated with administering the permit program (which at the time was a largely manual process). The experimental season was implemented in herd units where staff believed buck populations could sustain additional hunting pressure, and departed from the traditional methodology of harvest management by allowing the harvest of buck pronghorn to be determined by the landowner, rather than by the department via the issuance of buck permits. Staff have evaluated eight years of harvest and survey data and determined that the experimental season has resulted in a mixture of effects, among which are the skewing of the buck age structure towards younger bucks and a sex ratio heavily weighted towards does, both as a result of increased buck harvest; however, the overall impact of the experimental season has exerted little to no impact on population sustainability. Department surveys of landowner and hunter attitudes toward the experimental season indicate neither strong support nor antipathy. Additionally, the department has recently implemented an automated system for permit administration, eliminating one of the motivations for creating the experimental season in 2013. Therefore, the department eliminates the experimental season and returns to the previous harvest management methodology, which is the issuance of permits directly to landowners, who then furnish the permits to hunters. The department in the amendment to §65.40 increases the season length to 16 days to provide more hunting opportunity since harvest quotas are set by the department for each property.

The amendment to §65.32, concerning Antlerless Mule Deer Permit, removes a reference to crossbows, for reasons set forth earlier in this preamble in the discussion of the amendment to §65.3.

The amendment to §65.40, concerning Pronghorn Antelope: Opens Seasons and Bag Limits, alters the title of the section, changes internal references accordingly, and eliminates language regarding the experimental pronghorn season, for reasons set forth earlier in this preamble in the discussion of the amendment to §65.30. The expansion of the season from nine days to 16 days will not result in depletion or waste, as the total harvest is determined by the department on the basis of population, harvest, and habitat data.

The amendment to §65.42, concerning Deer, removes a reference to crossbows for reasons discussed earlier in this preamble and clarifies an inadvertently confusing bag limit for mule deer in subsection (c). The current rule indicates a bag limit of two deer, no more than one buck in Brewster, Pecos, and Terrell counties, which could be construed to indicate that two antlerless deer may be taken. This is true in the archery-only season and true with respect to the annual bag limit regardless of season, but is not true of the general season. The amendment makes it clear that the bag limit in the general season is one buck. Antlerless harvest in these counties during the general season is by permit only.

The amendment to §65.46, concerning Squirrel: Open Seasons, Bag, and Possession Limits, eliminates the closed season in 46 counties in West Texas and the Panhandle, which results in a

year-round season with no bag limit in those counties. The department has determined that some expansion of squirrel populations has occurred over the last few decades and therefore harvest opportunity may exist in areas that historically did not have squirrel populations. The department has determined that the amendment is not likely to result in negative biological impacts and has no concerns regarding resource depletion or waste.

The amendment to §65.64, concerning Turkey, standardizes zone boundaries to achieve symmetry between North and South zones in both the fall and spring seasons. Under current rule, there are counties that are in the South Zone for the fall season and the North Zone for the spring season. The department has received comments indicating that some people find this structure confusing. The current zones were implemented in the 1980s following an extensive breeding chronology study, but in the areas on either side of the axis of the current zone boundary there is very little biological difference with respect to the harvest impacts resulting from being in one zone or the other. Therefore, the amendment alters the zone designations for all or part of 26 counties to achieve symmetry between fall and spring seasons. The department has determined that the amendment will result in neither depletion nor waste of the resource.

The amendment also implements a harvest reporting requirement for turkey (gobblers) harvested during the spring in ten counties in the Oaks and Prairies and Gulf Coastal Plains areas. In these counties, the bag limit is a very conservative harvest strategy that reflects long-standing concerns about turkey population in that area, which has seen significant transformations in land use over the last 40 years that have resulted in population declines. The department continues to be concerned about long-term population trends in this area and seeks additional harvest data in order to gain a more statistically coherent characterization of the relationship between population status, land use, and harvest pressure. Therefore, the amendment requires all turkeys harvested during the spring season in Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, Matagorda, Milam, and Wharton counties to be reported to the department within 24 hours of harvest by means of a department-designated internet or mobile application. Additionally, the amendment closes the season for eastern turkey in Panola County. Harvest of eastern turkey in Panola County has fallen below the department's biological threshold for justifying the continuation of the open season (only one turkey, on average, has been harvested over the last three seasons) and department data indicate that turkeys are present on fewer than 50,000 contiguous acres. Finally, the amendment eliminates a reference to crossbows for reasons discussed earlier in this preamble.

The amendment to §65.66, concerning Chachalaca, alters season dates to be concurrent with those for quail, which is intended to provide additional hunting opportunity and simplify regulations. Staff has determined that the amendment will have no biological impact on chachalaca populations.

The department received 47 comments opposing adoption of all or a portion of the rules as proposed. Of those comments, 36 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated in some form or fashion that crossbows are not and should not be considered to be archery equipment. The department disagrees with the comments and responds that the physics of longbows, compound

bows, and recurved bows is the same as that of crossbows, namely, the use of potential energy stored in an elastic media to propel a projectile. No changes were made as a result of the comments.

One commenter opposed adoption and stated that crossbows and any device allowing a bow to be kept at full or partial draw should be illegal. The department disagrees with the comment and responds that although the rulemaking did not contemplate making any means or method lawful or unlawful but merely effects a nonsubstantive change in terminology, both crossbows and devices that allow any bow to be kept at full or partial draw are lawful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that crossbows should not be lawful during archery-only seasons and that the proposal was not about simplification but promotion of crossbows by crossbow manufacturers. The department disagrees with the comment and responds that although the rulemaking did not contemplate making any means or method lawful or unlawful, crossbows have been lawful during archery-only seasons for many years and the department is not aware of any resource or enforcement concern that would merit their prohibition. Additionally, the department notes that the change is completely nonsubstantive and was not proposed at the request of any manufacturer or for promotional purposes of any kind. No changes were made as a result of the comment.

Four commenters opposed adoption and stated in some form or fashion that a firearm is not a muzzleloader if it employs a breech mechanism for the introduction of any component. The department agrees with the comments and has made changes accordingly.

One commenter opposed adoption and stated that muzzleloading firearms should be required to have all components other than "the means of ignition" loaded through the muzzle. The department disagrees with the comment to the extent that the comment is intended to advocate the designation of weapons for which the propellant is loaded through the breech. If the comment is intended to advocate the restriction of propellant systems that use some external source to ignite powder in the barrel of the firearm, the department agrees with the comment and has made changes accordingly.

One commenter opposed adoption and stated that any firearm that uses black powder should be regarded as a muzzleloader. The department disagrees with the comment and responds that muzzleloaders are, as the name suggests, loaded through the muzzle, and that current rules allow the use of propellants other than black powder, such as Pyrodex or Blackhorn. No changes were made as a result of the comment.

One commenter opposed adoption and stated that convicted felons should be restricted to the use of muzzleloader designed prior to 1900 and prohibited from using modern muzzleloaders. The department neither agrees nor disagrees with the comment and responds that the possession of firearms by a person who has been convicted of a felony is governed by Penal Code, Chapter 46, and the rulemaking did not contemplate restricting use of lawful means on the basis of criminal history. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the muzzleloader definition should require both the powder (propellant) and the projectile to be loaded through the muzzle. The department agrees with the comment and has made changes accordingly. No changes were made as a result of the comment.

One commenter opposed adoption and stated that lengthening of the season for pronghorn in West Texas biologically would do more harm than good and will not generate additional income for the department, local communities, or businesses. The department disagrees with the comment and responds that as a management component the length of the open season for pronghorn is of minimal concern because the total harvest number is controlled by the department via the issuance of permits to landowners, based on survey, harvest, and population data for the property and the metapopulation (known as a herd unit). The department also responds that the agency has a statutory duty to protect, manage, and conserve wildlife resources, to which all other considerations, though important, are secondary. No changes were made as a result of the comment.

One person opposed adoption and stated that it is unfair that only landowners receive pronghorn permits. The department disagrees with the comment and responds that the provisions of Parks and Wildlife Code, §61.057, expressly authorize pronghorn permits to be distributed by landowners. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the proposed season extension will put stress on pronghorn populations. The department disagrees with the comment and responds that an additional week of hunting opportunity is not expected to exert any deleterious effects on pronghorn populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that pronghorn populations are declining. The department agrees with the comment, but if the comment is intended to be interpreted as a recommendation to discontinue pronghorn hunting in response, the department disagrees and responds that pronghorn harvest in Texas is tailored annually on a herd unit basis, taking into account a variety of factors, including but not limited to population and harvest data, habitat condition and utilization, and environmental factors. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current season is preferable because it occurs after the rut (which increases breeding success), permits can be utilized in the first week of the season, and the desert environment is fragile. The department agrees with the comment and responds that the season as adopted also occurs after the rut, permits can still be utilized early in the season if the landowner so desires, and neither the length or the timing of the season is believed to exert an impact of any kind on desert ecology. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the experimental pronghorn season should not be discontinued because pronghorn are a nuisance and a traffic hazard. The department disagrees that pronghorn are a nuisance, generally, and that traffic safety is not within the department's statutory authority to regulate; however, under Parks and Wildlife Code, Chapter 43, Subchapter H, a person who has evidence clearly showing that wildlife protected by the Parks and Wildlife Code is causing serious damage to agricultural, horticultural, or aquicultural interests or is a threat to public safety may apply for a permit to control the wildlife. No changes were made as a result of the comment.

One commenter opposed adoption and stated that landowners forget to apply for permits. The department neither agrees nor disagrees with the comment and responds that landowners who forget to apply for permits are encouraged to contact the depart-

ment to be reminded at the appropriate time. No changes were made as a result of the comment.

One commenter opposed adoption and stated that pronghorn are not fearful and are easy to kill; thus, extending the season is unnecessary. The department disagrees with the comment and responds that because the behavior described is natural and the total harvest on any property is controlled by the department via the issuance of permits, the length of the season is of minimal concern, for reasons noted earlier in this preamble. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current season is more than adequate and because pronghorn populations are declining the department should be focused on restoration efforts and not additional hunting days that negatively affect pronghorns. The department disagrees with the comment and responds that because the harvest on any property is controlled by the department via the issuance of permits, the length of the season is irrelevant. The department also responds that pronghorn population declines are unrelated to hunting and that permit issuance takes a variety of factors into account, including harvest impacts. In addition, the department notes that it has made significant investments into research and management initiatives aimed at improving pronghorn populations and their habitat where declines are observed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the increased season length is for appearances only and the department needs to realize that "managing and increasing the resource" is the only way to increase hunter opportunity. The department disagrees that the increase in season length is for appearances only as well as the assertion that the department is either not cognizant of and or engaged in serious, significant efforts to effectively manage pronghorn populations in the state. The department responds that, as explained earlier in this preamble, the season length is of minimal concern, since the department controls the harvest via the issuance of tags, which are distributed on the basis of scientific assessments of habitat, harvest impacts, environmental factors, reproductive success, and many other factors. The department also notes that climatological factors beyond the control of the department are one of the most significant drivers of pronghorn population dynamics and that harvest management strategies such as season length are not contributors to population declines. In addition, the department notes that it has made significant investments into research and management initiatives aimed at improving pronghorn populations and their habitat where declines are observed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it should be a statewide requirement that dogs used to trail wounded deer be kept on a leash. The department disagrees with the comment and responds that it is unnecessary to impose a leash requirement in areas where there is no recent history of dogs being used to hunt deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the limit on dogs used to trail wounded deer should be three, because sometimes the tracks are very long and more dogs would increase recovery rates. The department disagrees with the comment and responds that the department has determined that the historical limit of two dogs has been sufficient for as long as recovering wounded deer with dogs has been lawful in the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that easing restrictions on the use of dogs to trail wounded deer will cause a recurrence of hunting deer with dogs. The department, while sympathetic to the comment, disagrees with the comment and responds that law enforcement and resource personnel believe that the behavior in question has probably ceased, but hastens to add that appropriate measures will be taken if the practice is detected again. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule governing the use of deer to trail to wounded deer is unenforceable because hunters can't prove they are using a dog to track a wounded deer and not to hunt deer. The department disagrees with the comment and responds that the burden of proof that a person is hunting deer with dogs is the department's. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the use of dogs to trail deer should be illegal. The department disagrees with the comment and responds that allowing persons to recover wounded wildlife by using dogs is a reasonable measure to prevent the waste of wildlife resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that persons using dogs to trail deer in East Texas should be required to obtain a license for that purpose and have no hunting violations within the previous ten years. The department disagrees with the comment and responds that the department does not have the statutory authority to create such a permit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no leash requirement for persons using dogs to trail wounded deer. The department disagrees with the comment and responds that, as explained in the preamble to the proposed rule, there is some concern that allowing the use of unleashed dogs to trail wounded deer in specific counties could lead to a return of the practice of hunting deer with dogs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the use of electronic reporting applications is a terrible precedent. The department disagrees with the comment and responds that it is not a precedent, as mandatory harvest reporting via electronic applications for other species have been in effect for many years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "antler restriction" rules should be eliminated. The department disagrees with the comment and responds that it is not germane to any part of the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule allowing no more than five rounds to be in a rifle magazine should be reinstated. The department disagrees with the comment and responds that there is no evidence that any such regulation has ever existed in Texas and that there is no reason to consider introducing such a regulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that high fences should be illegal. The department disagrees with the comment and responds that under Parks and Wildlife Code, §1.013, the code does not prohibit or restrict the owner or occupant of land

from constructing or maintaining a fence of any height. No changes were made as a result of the comment.

The department received 135 comments supporting adoption of the rules as proposed.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.11, 65.19, 65.30, 65.32

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.3. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Arrow gun--A device that fires an arrow or bolt solely by the use of unignited compressed gas as the propellant.

(2) Air gun--A device that fires a bullet solely by the use of unignited compressed gas as the propellant.

(3) Alligator gig--A pole or staff equipped with at least one of the following:

(A) immovable prongs;

(B) two or more spring-loaded grasping arms; or

(C) a detachable head.

(4) Alligator hide tag (hide tag)--A department-issued tag required by federal law pursuant to the Convention on International Trade in Endangered Species (CITES) to be affixed to all alligators taken in the state. All alligator hide tags issued by the department are CITES tags.

(5) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(6) Antlerless deer--A deer having no hardened antler protruding through the skin.

(7) Antler point--A projection that extends at least one inch from the edge of a main beam or another tine. The tip of a main beam is also a point.

(8) Bait--Something used to lure any wildlife resource.

(9) Baited area--Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(10) Bearded hen--A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(11) Buck deer--A deer having a hardened antler protruding through the skin.

(12) Buck pronghorn--A pronghorn with black cheek patches below the ears.

(13) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(14) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(15) Deer population data--Results derived from deer population surveys and/or from systematic data analysis of density or herd health indicators, such as browse surveys or other scientifically acceptable data, that function as direct or indirect indicators of population density.

(16) Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes. For a deer or antelope carcass, the term includes the processing of the animal more than by quartering.

(17) Fully automatic firearm--Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(18) Gig--Any hand-held shaft with single or multiple points.

(19) Herd unit--A discrete geographical area designated by the department for the purpose of population monitoring and permit issuance with respect to pronghorn.

(20) Landowner--Any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent.

(21) Lawful archery equipment--Longbow, recurved bow, compound bow, and crossbow.

(22) License year--The period of time for which an annual hunting license is valid.

(23) Muzzleloader--Any firearm designed such that the propellant and bullet or projectile can be loaded only through the muzzle.

(24) Permanent residence--One's domicile. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(25) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(26) Pre-charged pneumatic--An air gun or arrow gun for which the propellant is supplied or introduced by means of a source that is physically separate from the air gun or arrow gun.

(27) Pronghorn--A pronghorn antelope (*Antilocapra americana*).

(28) Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(29) Spike-buck deer--A buck deer with no antler having more than one point.

(30) Unbranched antler--An antler having no more than one antler point.

(31) Unbranched antlered deer--A buck deer having at least one unbranched antler.

(32) Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(33) Wildlife resources--Alligators, all game animals, and all game birds.

(34) Wounded deer--A deer leaving a blood trail.

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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James Murphy

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §§65.40, 65.42, 65.46, 65.64, 65.66

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §65.194

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 25, 2021, adopted an amendment to 31 TAC §65.194, concerning Competitive Hunting Dog Event (Field Trials) and Fees, without changes to the proposed text as

published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1226). The rule will not be republished.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment requires an applicant for a field trial permit to supply a Social Security number as part of the application process and eliminates the requirement that all participants and spectators at a field trial conducted under a permit provide Social Security numbers to the department. Both state and federal laws regarding child support collection require the department to obtain Social Security numbers for each person to whom a recreational license is issued. Tex. Fam. Code §231.302, 42 U.S.C. §666. The department has determined that for purposes of compliance with federal and state laws regarding child support enforcement, it is necessary only for the person to whom the field trial permit is actually issued to provide that information.

The department received one comment opposing adoption of the rule as proposed. The commenter did not articulate a reason or rationale for opposing adoption.

The department received six comments in support of adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §81.403, which authorizes the department to issue permits authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or wildlife management areas; requires the conditions for the issuance and use of such permits to be prescribed by rule; and requires the department to charge a permit fee by 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 June 23, 2021.

TRD-202102445

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 389-4775



SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 25, 2021, adopted amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation. Section 65.319 is adopted with changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1227) and will be republished. Sections 65.314 - 65.318 and 65.320 are adopted without changes to the proposed text and will not be republished.

The change to §65.319, concerning Gallinules, Rails, Snipe, Woodcock, adds a semicolon to the end of subparagraph (A)

and a period to the end of subparagraph (B) to maintain parallel construction with similar provisions elsewhere. The change is nonsubstantive.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission under Parks and Wildlife Code, Chapter 64, Subchapter C.

The amendments establish the season dates for the 2021-2022 migratory game bird seasons. In all cases, the rules retain the season structure and bag limits for all species of migratory game birds from last year, with one exception, while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The single exception is an increase of two days of hunting opportunity in the Special White-winged Dove Area (SWWDA) within the South Dove Zone. The Service has allowed Texas to provide two days of additional opportunity in the SWWDA provided those days are subtracted from the regular South Zone season. Survey data indicate a preference by landowners and hunters for as much early hunting opportunity as possible.

The department received five comments opposing adoption of the rules as proposed. All five commenters provided reasons or rationales for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because some commenters provided multiple reasons or rationales for opposing adoption, the number of department responses is larger than the number of commenters.

One commenter opposed adoption and stated the duck season in the South Zone should not open on the same day that deer season opens. The department disagrees with the comment and responds that under federal frameworks the department is authorized to provide 74 days of duck hunting opportunity between September 24, 2021 and January 29, 2022. Hunter surveys and public comment indicate a preference for 1) a split season, to allow duck populations to congregate without being subjected to hunting pressure, 2) hunting opportunity over the Thanksgiving and Christmas holiday seasons, and 3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bag limits should apply to hunting parties rather than individual hunters because it is difficult to identify birds in low light conditions. The department disagrees with the comment and responds that personal bag limits are the best way to distribute, manage, and monitor harvest impacts to the resource while providing for the personal accountability of the hunter. The department also notes that species identification is a duty of an ethical hunter. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because ducks are arriving later every year, the split season should be reduced or eliminated. The department disagrees with the comment and responds that the purpose of the split season is to allow ducks to rally and recongregate, which improves hunter

success later in the season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit in the Eastern Goose Zone should be five birds, no more than two Canada geese or one white-fronted goose. The department disagrees with the comment and responds that it is commission policy to adopt the most liberal bag limits possible under the federal frameworks unless there is a biological reason not to do so; therefore, the current bag limit of five birds to include no more than two white-fronted geese is being retained. No changes were made as a result of the comment.

One commenter opposed adoption and stated duck season in the South Zone should begin earlier and contain a second split. The department disagrees with the comment and responds that the federal frameworks authorize Texas to have only one split in each zone (other than the HPMMU). No changes were made as a result of the comment.

One commenter opposed adoption and stated that the sandhill crane season in Zone C should end in mid-February. The department disagrees with the comment and responds that the federal Endangered Species Act requires states to limit any human activity considered hazardous to endangered species, including recreational hunting of similar-appearing migratory game birds. A significant number of endangered whooping cranes, which have characteristics similar to sandhill cranes, are typically still in migration to the Aransas National Wildlife Refuge through the beginning of December and begin spring migration as early as February; therefore, the rules as adopted truncate the season in Zone C for that reason. No changes were made as a result of the comment.

One commenter opposed adoption and stated that public hunting regulations for state and federal public waterfowl areas should limit the number of shotgun shells per hunter and all hunts should be by drawing. The department disagrees with the comment and responds that the rules governing public hunting activities are contained in 31 TAC Chapter 65, Subchapter H and are not affected by this rulemaking. The department has no authority to regulate public hunting on federal lands except for state lands jointly managed with a federal entity (such as the U.S. Forest Service), in which case the regulations are contained at 31 TAC Chapter 65, Subchapter H and department publications adopted by order of the executive director of the department. No changes were made as a result of the comment.

The department received 23 comments supporting adoption of the rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.319. *Gallinules, Rails, Snipe, Woodcock.*

(a) Gallinules (moorhen or common gallinule and purple gallinule) may be taken in any county during the season established in this subsection.

(1) Season dates: September 11 - 26 and November 6 - December 29, 2021.

(2) Daily bag limit: 15 in the aggregate.

(b) Rails may be taken in any county in this state during the season established by this subsection.

(1) Season dates: September 11 - 26 and November 6 - December 29, 2021.

(2) Daily bag limits:

(A) King and clapper rails. The daily bag limit is 15 in the aggregate; and

(B) Sora and Virginia rails. The daily bag limit is 25 in the aggregate.

(c) Snipe may be taken in any county of the state during the season established by this subsection.

(1) Season dates: November 6, 2021 - February 20, 2022.

(2) The daily bag limit is eight.

(d) Woodcock may be taken in any county of the state during the season established by this subsection.

(1) Season dates: December 18, 2021 - January 31, 2022.

(2) The daily bag limit is three.

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 June 23, 2021.

TRD-202102442

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 389-4775

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SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §65.327

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 25, 2021, adopted an amendment to 31 TAC §65.327, concerning Commercial Nongame Permits, without changes to the proposed text as published in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1230). The rule will not be republished.

The amendment is a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires each state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment removes an unnecessary internal reference in subsection (b). The provision referenced (§65.331(b)) is not germane, as it consists of prohibited means and methods.

The department received no comments supporting or opposing adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes

the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

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 June 23, 2021.

TRD-202102448

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2021

Proposal publication date: February 19, 2021

For further information, please call: (512) 389-4775



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 154. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS

37 TAC §§154.1, 154.2, 154.4 - 154.9

The Texas Board of Criminal Justice adopts amendments to §§154.1, 154.2, and 154.4 - 154.9, concerning Private Sector Prison Industries Programs, without changes to the proposed text as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1970). The rules will not be republished.

The adopted amendments are minor word changes, clarifications, and organizational changes.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.0011, which requires the board to approve, certify, and supervise private sector prison industries programs; §492.013, which authorizes the board to adopt rules; §497.004(a), which grants the board authority to develop by rule and the department authority to administer an incentive pay scale for work pro-

gram participants; §497.006, which authorizes the department to enter into necessary contracts related to the prison industries program; §497.051, which requires the board to approve, certify, and supervise private sector prison industries programs; §497.0527, which requires the board to maintain files on written complaints regarding private sector prison industries programs; §497.056(a), which requires the department to forward specified money to the comptroller; §497.057, which requires the board to adopt necessary rules to ensure the private sector prison industries program complies with the federal prison enhancement certification program; §497.058, which requires the board to develop a rule regarding the prison industry enhancement certification program wage; §497.0581, which requires the board to develop a rule regarding deductions that may be taken from the wages received by the participants and disbursement of those deductions; §497.059, which limits the impact of certification on non-prison industry in this state; §497.0595, which limits private sector prison industries program contracts that would negatively affect employers in this state; §497.0596, which requires the department to provide notice before contracting with an employer for a private sector prison industries program; §497.060, which requires compensation to participants injured while working; §497.062, which limits the number of participants and cost accounting centers in the private sector prison industries program at any one time; and §497.063, which establishes requirements for contracts related to private sector prison industries programs.

Cross Reference to Statutes: Texas Labor Code §302.016, which requires the Texas Workforce Commission to adopt necessary rules related to notice regarding contracts with an employer for a private sector prison industries program.

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 June 28, 2021.

TRD-202102472

Kristen Worman

General Counsel

Texas Department of Criminal Justice

Effective date: July 18, 2021

Proposal publication date: March 26, 2021

For further information, please call: (936) 437-6700



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 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 105, Children's Autism Program are being transferred to 26 TAC Part 1, Chapter 358, Children's Autism Program.

The rules will be transferred in the Texas Administrative Code effective August 1, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 105

TRD-202102519

Texas 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 105, Children's Autism Program are being transferred to 26 TAC Part 1, Chapter 358, Children's Autism Program.

The rules will be transferred in the Texas Administrative Code effective August 1, 2021.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 105

TRD-202102520

Figure: 40 TAC Chapter 105

Current Rules Title 40. Social Services and Assistance Part 2. Department of Assistive and Rehabilitative Services Chapter 105. Children's Autism Program	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 358. Children's Autism Program
Subchapter A. General Rules	Subchapter A. General Rules
§105.101. Purpose.	§358.101. Purpose.
§105.103. Legal Authority.	§358.103. Legal Authority.
§105.105. Definitions.	§358.105. Definitions.
Subchapter C. DARS Focused ABA Services	Subchapter C. DARS Focused ABA Services
§105.301. Purpose.	§358.301. Purpose.
§105.307. Eligibility.	§358.307. Eligibility.
§105.309. Enrollment.	§358.309. Enrollment.
§105.311. Services Provided.	§358.311. Services Provided.
§105.313. Length of Services.	§358.313. Length of Service.
§105.315. Participation Requirements.	§358.315. Participation Requirements.
Subchapter E. Autism Program Rights	Subchapter E. Autism Program Rights
§105.507. Rights of Children and Parents.	§358.507. Rights of Children and Parents.
§105.509. Complaint Process.	§358.509. Complaint Process.
§105.511. Confidentiality of Information.	§358.511. Confidentiality of Information.
§105.515. Staff Requirements.	§358.515. Staff Requirements.
Subchapter F. Cost Share	Subchapter F. Cost Share
§105.605. Cost Share.	§358.605. Cost Share.
§105.607. HHSC Fee Schedule Amount.	§358.607. HHSC Fee Schedule Amount.
§105.608. Insurance Payments.	§358.608. Insurance Payments.
§105.609. Payer of Last Resort.	§358.609. Payer of Last Resort.



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

Credit Union Department

Title 7, Part 6

Chapter 91, Subchapter D, concerning powers of credit unions, consisting of §§91.401, (Credit Union Ownership of Property), 91.402 (Insurance for Members), 91.403 (Debt Cancellation Products; Federal Parity), 91.404 (Purchasing Assets and Assuming Deposits and Liabilities of another Financial Institution), 91.405 (Records Retention and Preservation), 91.406 (Credit Union Service Contracts), 91.407 (Electronic Notification), and 91.408 (User Fee for Shared Electronic Terminal).

Chapter 91, Subchapter M, concerning electronic operations, consisting of §§91.4001 (Authority to Conduct Electronic Operations), and 91.4002 (Transactional Web Site Notice Requirement; and Security Review).

Chapter 91, Subchapter N, concerning emergency or permanent closing of office or operation, consisting of §§91.5001 (Emergency Closing), 91.5002 (Effect of Closing), and 91.5005 (Permanent Closing of an Office).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in these chapters continue to exist. 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 commission also invites comments on how to make these rules easier to understand. For example:

--Does the rule organize the material to suit your needs? If not, how could the material be better organized?

--Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

--Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

--Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

--Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to cudmail@tud.texas.gov. Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202102464

John J. Kolhoff

Commissioner

Credit Union Department

Filed: June 25, 2021



Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §151.55.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-202102499

Kristen Worman

General Counsel

Texas Department of Criminal Justice

Filed: June 28, 2021



Adopted Rule Reviews

Texas Department of Public Safety

Title 37, Part 1

Pursuant to the notice of proposed rule review published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2589), the Texas Department of Public Safety (the department) has reviewed and considered for re-adoption, revision or repeal all sections of the following chapters of Title 37, Part I of the Texas Administrative Code, in accordance

with Texas Government Code, §2001.039: Chapter 4 (Commercial Vehicle Regulations and Enforcement Procedures); Chapter 6 (License to Carry Handguns); Chapter 7 (Texas Division of Emergency Management); Chapter 13 (Controlled Substances); Chapter 28 (DNA, CODIS, Forensic Analysis and Crime Laboratories); and Chapter 34 (Negotiation and Mediation of Certain Contract Disputes). The department received no written comments regarding the review of its rules.

The department has completed its review and determined that the reasons for originally adopting Chapters 4, 6, 13, 28, and 34 continue to exist. As a result of the rule review process, the department may propose revisions to its rules when appropriate and necessary. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the department in accordance with the requirements of the Administrative Procedure Act, Texas Government code, Chapter 2001.

The department has completed its review and determined that the reasons for originally adopting Chapter 7 do not continue to exist. The

future proposed repeal of this Chapter will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the department in accordance with the requirements of the Administrative Procedure Act, Texas Government code, Chapter 2001.

This concludes the department's review of 37 TAC Part I, Chapters 4, 6, 7, 13, 28, and 34.

TRD-202102461

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: June 25, 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 Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/05/21 - 07/11/21 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 07/05/21 - 07/11/21 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202102515

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 29, 2021

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 9, 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 **August 9, 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: AM JACKSONVILLE FOOD SHOP, INCORPORATED dba Hot Spot 1; DOCKET NUMBER: 2020-1502-PST-E; IDENTIFIER: RN102063641; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(C) and (3), by failing to provide written notice to the agency of any changes or additional information concerning the underground storage tank (UST) system within 30 days of the occurrence of the change or addition; and 30 TAC §334.50(b)(1)(A) and (2) and (d)(4)(A)(ii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,643; ENFORCEMENT COORDINATOR: Ken Moller, (512) 534-7550; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2021-0090-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2), New Source Review Permit Numbers 21101 and PSDTX1248, Special Conditions Number 1, Federal Operating Permit Number O1235, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 23, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,850; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: City of Reno; DOCKET NUMBER: 2020-1344-WQ-E; IDENTIFIER: RN105600977; LOCATION: Reno, Parker County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit for a small municipal separate storm sewer system; PENALTY: \$938; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Roma; DOCKET NUMBER: 2020-1395-MWD-E; IDENTIFIER: RN101613560; LOCATION: Roma, Starr 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 WQ0011212002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$3,188; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2021-0161-AIR-E; IDENTIFIER: RN108633546; LOCATION: Goldsmith, Andrews County; TYPE OF FACILITY: oil and gas handling and production facility; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §106.6(b), Permit by Rule Registration Number 158261, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$1,126; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: CORESLAB STRUCTURES (TEXAS) INCORPORATED; DOCKET NUMBER: 2021-0237-IWD-E; IDENTIFIER: RN105147250; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: industrial wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004384000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), §319.5(b), and TPDES Permit Number WQ0004384000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$5,541; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2020-1377-AIR-E; IDENTIFIER: RN102984911; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 93973, Special Conditions Number 1, Federal Operating Permit Number O3369, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$25,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,500; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Freeport LNG Development, L.P.; DOCKET NUMBER: 2021-0203-AIR-E; IDENTIFIER: RN106481500; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: natural gas treating plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Numbers 104840 and N170, Special Conditions Number 1, Federal Operating Permit Number O3958, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,626; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: GENE HARRIS PETROLEUM, INCORPORATED dba Granbury Fast Stop; DOCKET NUMBER: 2021-0210-PST-E; IDENTIFIER: RN101546471; LOCATION: Granbury, Hood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: James Lake Midstream LLC; DOCKET NUMBER: 2020-1137-AIR-E; IDENTIFIER: RN107088759; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O3771/General Operating Permit (GOP) Number 514, Site-wide Requirements Numbers (b)(2) and (42)(F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 116553, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Number (a)(4), FOP Number O3771/GOP Number 514, Site-wide Requirements Numbers (b)(2) and (9)(E)(ii), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,476; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,238; ENFORCEMENT COORDINATOR: Richard Garza, (512) 534-5859; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: Jefferson Railport Terminal I (Texas) LLC; DOCKET NUMBER: 2021-0234-AIR-E; IDENTIFIER: RN106402894; LOCATION: Rose City, Orange County; TYPE OF FACILITY: petroleum terminal; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 118901, GHGPSDTX108, and PSDTX1408, Special Conditions Number 1, Federal Operating Permit Number O3831, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,238; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: KMF ENTERPRISES, INCORPORATED dba Sweetwater Chevron; DOCKET NUMBER: 2021-0213-PST-E; IDENTIFIER: RN102432317; LOCATION: Sweetwater, Nolan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$4,999; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Leroy-Tours-Gerald Water Supply Corporation; DOCKET NUMBER: 2021-0214-PWS-E; IDENTIFIER: RN101456713; LOCATION: Leroy, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(a)(4), by failing to install water transmission and distribution lines below the frost line and in no case less than 24 inches below the ground surface; 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 facility will use to comply with the monitoring requirements; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: MA & MH INCORPORATED dba Mun Store and MUN PROPERTIES, INCORPORATED dba Mun Store; DOCKET NUMBER: 2021-0065-PST-E; IDENTIFIER: RN101434496; LOCATION: Pointblank, San Jacinto County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing

to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,624; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2021-0112-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9334, Special Conditions Number 1, Federal Operating Permit Number O1668, General Terms and Conditions and Special Terms and Conditions Number 22, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,250; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Suva Kamana Investment LLC dba Kilgore Grab-N-Go; DOCKET NUMBER: 2020-1327-PST-E; IDENTIFIER: RN101850576; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(e)(1) and (2) and TWC, §26.3475(d), by failing to maintain all corrosion protection records required to adequately demonstrate compliance with all corrosion protection requirements; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.51(b)(2)(B)(ii) and TWC, §26.3475(c)(2), by failing to equip the spill and overflow prevention equipment with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container; and 30 TAC §334.602(a), by failing to identify and designate at least one named individual for each class of operator, Class A, Class B, and Class C, at the facility; PENALTY: \$6,300; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2916 Teague Drive Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Targa Pipeline Mid-Continent WestTex LLC; DOCKET NUMBER: 2021-0012-AIR-E; IDENTIFIER: RN105856306; LOCATION: Midland, Midland County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(c) and 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 the emissions event; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 142114, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Number (a)(3), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$8,938; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(18) COMPANY: Trinity Presbyterian Church (PCA) of Boerne, Texas; DOCKET NUMBER: 2021-0231-PWS-E; IDENTIFIER: RN108692708; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c),

by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$862; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2020-1256-AIR-E; IDENTIFIER: RN100214386; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: oil refining plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 20740 and 38754 and PSDTX324M14, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1458, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 24, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(c) and §122.143(4), FOP Number O1458, GTC and 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 the emissions event; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1458, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 106965, SC Number 1, FOP Number O1458, GTC and STC Number 24, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$18,980; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,592; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Walter J. Carroll Water Company, Incorporated; DOCKET NUMBER: 2021-0199-PWS-E; IDENTIFIER: RN101266682; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence or well house around each water treatment plant, well unit, potable water storage tank, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; and 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; PENALTY: \$2,585; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202102509

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: June 29, 2021

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Cancellation of Public Hearing on Redi-mix LLC: Proposed Registration No. 164700

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public hearing previously scheduled for July 12, 2021, has been cancelled. This application has been withdrawn by the applicant.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202102462

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2021



Enforcement Orders

An agreed order was adopted regarding City of Dilley, Docket No. 2019-0382-MWD-E on June 29, 2021, assessing \$4,875 in administrative penalties with \$975 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 K3 Business Solutions LLC, Docket No. 2019-1785-PST-E on June 29, 2021, assessing \$6,262 in administrative penalties with \$1,252 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alejandro Salinas dba Salinas Tire Shop, Docket No. 2020-0100-PST-E on June 29, 2021, assessing \$4,375 in administrative penalties with \$875 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Heath, Docket No. 2020-0286-WQ-E on June 29, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Wilmer, Docket No. 2020-0299-PWS-E on June 29, 2021, assessing \$7,428 in administrative penalties with \$1,485 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JOSHI & NAGARKOTI LLC dba Jeff Stop, Docket No. 2020-0364-PST-E on June 29, 2021, assessing \$4,500 in administrative penalties with \$900 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 Town of Van Horn, Docket No. 2020-0371-MWD-E on June 29, 2021, assessing \$6,075 in administrative penalties with \$1,215 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hico, Docket No. 2020-0379-MWD-E on June 29, 2021, assessing \$4,875 in administrative penalties with \$975 deferred. Information concerning any aspect

of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BMC West, LLC, Docket No. 2020-0421-PST-E on June 29, 2021, assessing \$5,715 in administrative penalties with \$1,143 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 Motiva Enterprises LLC, Docket No. 2020-0489-AIR-E on June 29, 2021, assessing \$7,125 in administrative penalties with \$1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, 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 Grizzly Pines, LLC, Docket No. 2020-0922-PWS-E on June 29, 2021, assessing \$1,750 in administrative penalties with \$350 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TS Investments LLC dba Neighborhood Mart, Docket No. 2020-0953-PST-E on June 29, 2021, assessing \$3,375 in administrative penalties with \$675 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 SRC Water Supply Inc dba Rolling Hills Water Supply and Sandra R. Barbey dba Rolling Hills Water Supply, Docket No. 2020-0968-PWS-E on June 29, 2021, assessing \$1,141 in administrative penalties with \$228 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Silgan Containers Manufacturing Corporation, Docket No. 2020-1015-AIR-E on June 29, 2021, assessing \$6,670 in administrative penalties with \$1,334 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GB Biosciences LLC, Docket No. 2020-1042-AIR-E on June 29, 2021, assessing \$5,738 in administrative penalties with \$1,147 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2020-1050-AIR-E on June 29, 2021, assessing \$1,313 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Randolph D & L Company, LLC, Docket No. 2020-1067-AIR-E on June 29, 2021, assessing \$3,850 in administrative penalties with \$770 deferred. Information

concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sandra R. Barbey dba Loma Linda Water Supply, Docket No. 2020-1101-PWS-E on June 29, 2021, assessing \$238 in administrative penalties with \$47 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I, L.P., Docket No. 2020-1182-PWS-E on June 29, 2021, assessing \$150 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202102534

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 30, 2021



Enforcement Orders

An agreed order was adopted regarding The Quikrete Companies, LLC, Docket No. 2018-1411-AIR-E on June 30, 2021, assessing \$13,812 in administrative penalties with \$2,762 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, 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 Barstow, Docket No. 2019-0627-PWS-E on June 30, 2021, assessing \$545 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Perma Pom LLC, Docket No. 2019-0629-WQ-E on June 30, 2021, assessing \$19,687 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 Big Diamond, LLC dba Corner Store 3937, Docket No. 2019-0798-PST-E on June 30, 2021, assessing \$11,879 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.

A default order was adopted regarding Scott W. Gray dba Larry's Mobile Home Service & Supplies, Docket No. 2019-0967-MSW-E on June 30, 2021, assessing \$5,010 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 Rose City, Docket No. 2019-1132-PWS-E on June 30, 2021, assessing \$521 in administrative penalties. Information concerning any aspect of this order may

be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Harker Heights, Docket No. 2019-1254-MWD-E on June 30, 2021, assessing \$26,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding NICO-TYME WATER CO-OP, INC., Docket No. 2019-1478-PWS-E on June 30, 2021, assessing \$962 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.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2019-1492-MWD-E on June 30, 2021, assessing \$68,019 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lone Star Specialty Products, LLC, Docket No. 2019-1511-AIR-E on June 30, 2021, assessing \$43,024 in administrative penalties with \$8,604 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Electra, Docket No. 2019-1581-MWD-E on June 30, 2021, assessing \$17,850 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Laredo, Docket No. 2019-1661-PWS-E on June 30, 2021, assessing \$2,767 in administrative penalties with \$43 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Breckenridge, Docket No. 2019-1753-MWD-E on June 30, 2021, assessing \$17,187 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 Russbel Davila dba RDM Tire Service, Docket No. 2019-1798-MSW-E on June 30, 2021, assessing \$31,133 in administrative penalties with \$6,226 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Olney, Docket No. 2019-1805-MWD-E on June 30, 2021, assessing \$29,062 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MarkWest Energy East Texas Gas Company, L.L.C., Docket No. 2020-0016-AIR-E on June 30, 2021, assessing \$207,000 in administrative penalties with \$41,400 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JSWC, Ltd., Docket No. 2020-0189-EAQ-E on June 30, 2021, assessing \$7,771 in administrative penalties with \$1,554 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the Fort Bend County Municipal Utility District No. 134A, Docket No. 2020-0331-MWD-E on June 30, 2021, assessing \$12,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2020-0348-AIR-E on June 30, 2021, assessing \$150,000 in administrative penalties with \$30,000 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, 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 Pasadena, Docket No. 2020-0476-MWD-E on June 30, 2021, assessing \$10,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOHANA Investments, Inc., Docket No. 2020-0560-PWS-E on June 30, 2021, assessing \$350 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OCI Beaumont LLC, Docket No. 2020-0691-AIR-E on June 30, 2021, assessing \$17,400 in administrative penalties with \$3,480 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Carolina Creek Christian Camps, Docket No. 2020-0788-MWD-E on June 30, 2021, assessing \$16,875 in administrative penalties with \$3,375 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF TOTAL Petrochemicals LLC, Docket No. 2020-0894-AIR-E on June 30, 2021, assessing \$26,250 in administrative penalties with \$5,250 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WPX Energy Permian, LLC, Docket No. 2020-0941-AIR-E on June 30, 2021, assessing \$18,937 in

administrative penalties with \$3,787 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ROESCHCO CONSTRUCTION, INC., Docket No. 2020-1282-WQ-E on June 30, 2021, assessing \$37,874 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.

TRD-202102535

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 30, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls: Proposed Air Quality Registration Number 165369

APPLICATION. Five Star Concrete, Inc., 2 Grist Mill Road, Umland, Texas 78640-9363 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 165369 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 2492 County Road 130, Hutto, Williamson County, Texas 78634. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.598264&lng=-97.555709&zooom=13&type=r>. This application was submitted to the TCEQ on June 7, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on June 22, 2021.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written com-

ments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, August 18, 2021, at 6:00 p.m.

Hampton Inn & Suites

327 Ed Schmidt Boulevard

Hutto, Texas 78634

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Five Star Concrete, Inc., 2 Grist Mill Road, Umland, Texas 78640-9363, or by calling Mr. Stephen Hampton, Compliance Manager at (512) 398-7797.

Notice Issuance Date: June 29, 2021

TRD-202102517

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 29, 2021



Notice of District Petition

Notice issued June 22, 2021

TCEQ Internal Control No. D-01202021-016; LaSalle Water Control and Improvement District No. 1A (the District), filed a resolution for conversion of the District to a Municipal Utility District (MUD) with the Texas Commission on Environmental Quality (TCEQ). The resolution was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; and the procedural rules of the TCEQ. The District contains approximately 1159.81 acres of land within Calhoun County. A copy of the District's site map is available for public review upon request at either the District's office or at the TCEQ's office. According to the District's resolution contained in the application, LaSalle Water Control and Improvement District No. 1A was created by the Legislature in 2005. The District operates under Chapters 49 and 51 of the Texas Water Code. The District's resolution further states that the notice of the District's intent to conduct a hearing on conversion was published in the *The Port Lavaca Wave* for two consecutive weeks pursuant to the Texas Water Code §§54.030 and 54.032. The hearing for conversion was conducted

on December 15, 2020, and entered in the minutes pursuant to the Texas Water Code §§54.030(b) and (d). After the hearing, having determined that conversion into a MUD would serve the best interest of the District and would be a benefit to the land and property included in the District, the resolution for conversion was adopted.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the 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 website at www.tceq.texas.gov.

TRD-202102500

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 28, 2021



Notice of Hearing on Denton County Municipal Utility District No. 10: SOAH Docket No. 582-21-2602; TCEQ Docket No. 2020-1310-MWD; Permit No. WQ0015803001

APPLICATION.

Denton County Municipal Utility District No. 10, c/o Julianne Kugle, Josh Kahn, and Judy Marcantel Sanford Kuhl Hagan Kugle Parker Kahn, LLP, 1980 Post Oak Boulevard, Suite 1380, Houston, Texas 77056, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015803001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. TCEQ received this application on June 4, 2019.

The facility will be located approximately 400 feet north and 400 feet west of the northwest corner of the intersection of Boss Range Road and Sam Reynolds Road, in Denton County, Texas 76247. The treated effluent will be discharged to Catherine Branch, thence to Denton Creek, thence to Grapevine Lake in Segment No. 0826 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for Catherine Branch above unnamed tributary and high aquatic life use for Catherine Branch below unnamed tributary. The designated uses for Segment No. 0826 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Catherine Branch below unnamed tributary, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-97.309905%2C33.054827&level=12>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Justin Community Library, in the Coffee Bar on the community board, 408 Pafford Avenue, Justin, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - August 17, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/j/1616647225?pwd=a1Z5UWFMR-WpwNXhsMFVXdGljckFuQT09>

Meeting ID: 161 664 7225

Password: gtv4R7

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 664 7225

Password: 866413

Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge.

The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 7, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from Denton County Municipal Utility District No. 10 at the address stated above or by calling Ms. Karena Hauter, P.E., Project Manager, BGE, Inc., at (713) 488-8269.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: June 25, 2021

TRD-202102469

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 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 **August 9, 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 August 9, 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: Jose Montoya; DOCKET NUMBER: 2019-1465-MSW-E; TCEQ ID NUMBER: RN105994362; LOCATION: 13059 State Highway 7 West, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,562; STAFF ATTORNEY: Christopher Mullins, Litigation, MC 175, (512) 239-0141; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Martin Contreras and Otilia Contreras; DOCKET NUMBER: 2019-0651-PST-E; TCEQ ID NUMBER: RN101905164; LOCATION: 501 South Main Street, Hale Center, Hale County; TYPE OF FACILITY: underground storage tank (UST) system and an out-of-service UST System; RULES VIOLATED: 30 TAC §334.47(a)(2) and TCEQ Default Order Docket Number 2017-0753-PST-E, Ordering Provision 3.a., by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$28,125; STAFF ATTORNEY: Ryan Rutledge, Litigation, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202102507

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: June 29, 2021



Notice of Opportunity to Comment on Default 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 Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which

in this case is **August 9, 2021**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 9, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: James T. Scott; DOCKET NUMBER: 2020-0349-WOC-E; TCEQ ID NUMBER: RN105733927; LOCATION: 10205 United States Highway 87, Lubbock, Lubbock County; TYPE OF FACILITY: distribution of public drinking water; RULES VIOLATED: TWC, §37.003, Texas Health and Safety Code, §341.034(b) and 30 TAC §30.5(a) and §30.381(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$330; STAFF ATTORNEY: Ryan Rutledge, Litigation, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: MEDCLEAN MANAGEMENT SOLUTIONS INC.; DOCKET NUMBER: 2019-1330-MSW-E; TCEQ ID NUMBER: RN105513519; LOCATION: 3926 South Shiloh Road, Garland, Dallas County; TYPE OF FACILITY: medical waste transporter business; RULES VIOLATED: 30 TAC §326.5(3) by causing, suffering, allowing, or permitting the collection, storage, transportation, processing, or disposal, or the use or operation of a solid waste facility to store, process, or dispose of solid waste in such a manner that causes the endangerment of human health and welfare or the environment; 30 TAC §326.23(d) and §326.53(b)(8), by failing to maintain accurate and complete electronic or hard copy manifests for shipments of untreated medical waste (UMW) and make them available for inspection by the executive director; and 30 TAC §326.53(b)(15), by failing to accept UMW that was not properly packaged by the generator; PENALTY: \$102,333; STAFF ATTORNEY: Tracy Chandler, Litigation, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Michael Gerald Barron; DOCKET NUMBER: 2019-0961-OSS-E; TCEQ ID NUMBERS: RN110775467 and RN110775863; LOCATIONS: 632 Irion Street, Barnhart, Irion County (Site 1) and 625 East Reagan Street, Barnhart, Irion County (Site 2); TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: Texas Health and Safety Code, §366.004 and §366.051(a) and 30 TAC §285.3(a) and (b)(1), by failing to obtain authorization prior to constructing, altering, repairing, extending, or operating an OSSF at Site Number 1 and 2; PENALTY: \$2,508; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE:

San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202102511

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: June 29, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of JANOOb, INC. dba Snappy Foods 17: SOAH Docket No. 582-21-2553; TCEQ Docket No. 2020-0654-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 29, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 22, 2020, concerning assessing administrative penalties against and requiring certain actions of JANOOb, INC. dba Snappy Foods 17, for violations in Nueces County, Texas, of: 30 Texas Administrative Code §§334.42(a), 334.45(c)(3)(A), and 334.48(a) and (b).

The hearing will allow JANOOb, INC. dba Snappy Foods 17, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford JANOOb, INC. dba Snappy Foods 17, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of JANOOb, INC. dba Snappy Foods 17 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** JANOOb, INC. dba Snappy Foods 17, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Roslyn Dubberstein, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Infor-

mation concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 28, 2021

TRD-202102516

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 29, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Rose Bailey: SOAH Docket No. 582-21-2660; TCEQ Docket No. 2019-0346-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 22, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 3, 2019, concerning assessing administrative penalties against and requiring certain actions of Rose Bailey, for violations in Tom Green County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow Rose Bailey, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Rose Bailey, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing.

Upon failure of Rose Bailey to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Rose Bailey, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Taylor Pearson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 24, 2021

TRD-202102465

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Rudy Ramos dba South Texas Collision Repair: SOAH Docket No. 582-21-2552; TCEQ Docket No. 2020-0999-AIR-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 22, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 8, 2021, concerning assessing administrative penalties against and requiring certain actions of Rudy Ramos dba South Texas Collision Repair, for violations in Nueces County, Texas, of: Texas Health & Safety Code §§382.0518(a) and 382.085(b) and 30 Texas Administrative Code §116.110(a)

The hearing will allow Rudy Ramos dba South Texas Collision Repair, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Rudy Ramos dba South Texas Collision Repair, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Rudy Ramos dba South Texas Collision Repair to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Rudy Ramos dba South Texas Collision Repair, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code ch. 382 and 30 Texas Administrative Code chs. 70 and 116; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Judy Bohr, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 22, 2021

TRD-202102466

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Weinritter Realty, LP and WRR Commerce LLC: SOAH Docket NO. 582-21-2556; TCEQ Docket No. 2019-0842-IHW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 22, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 10, 2021, concerning assessing administrative penalties against and requiring certain actions of WEINRITTER REALTY, LP and WRR COMMERCE LLC, for violations in Bexar County, Texas, of: Texas Water Code §26.121 and 30 Texas Administrative Code §335.4.

The hearing will allow WEINRITTER REALTY, LP and WRR COMMERCE LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford WEINRITTER REALTY, LP and WRR COMMERCE LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of WEINRITTER REALTY, LP and WRR COMMERCE LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** WEINRITTER REALTY, LP and WRR COMMERCE LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 335; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Judy Bohr, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concern-

ing your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 22, 2021

TRD-202102467

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of William D. Kirshy: SOAH Docket No. 582-21-1905; TCEQ Docket No. 2018-1741-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing via Zoom video conference:

10:00 a.m. - July 23, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 161 526 1730

Passcode: nvuR4D

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 526 1730

Passcode: 448271

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 12, 2020, concerning assessing administrative penalties against and requiring certain actions of William D. Kirshy, for violations in Harris County, Texas, of: Texas Water Code §§26.456 and 37.003, and 30 Texas Administrative Code §§334.401(a), 334.407(b), and 334.424(a).

The hearing will allow William D. Kirshy, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford William D. Kirshy, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of William D. Kirshy to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** William D. Kirshy, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7, 26, and 37, and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 24, 2021

TRD-202102468

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 25, 2021



Notice of Public Meeting for Air Quality Permits: Air Quality Permit Numbers 108113, PSDTX1344M2, and GHGPSDTX43

APPLICATION. voestalpine Texas LLC, 2800 Kay Bailey Hutchison Road, Portland, Texas 78374-7400, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to State Air Quality Permit 108113, modification to Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1344M2, and modification to Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX43 for emissions of GHGs, which would authorize modification to the Direct Reduced Iron Hot Briquetting Facility located at 2800 Kay Bailey Hutchison Road, Portland, San Patricio County, Texas 78374. The existing facility will emit the following air contaminants: carbon monoxide, nitrogen oxides, hydrogen sulfide, hazardous air pollutants, organic compounds, particulate matter, including particulate matter with diameters of 10 microns or less and 2.5 microns or less, lead, sulfur dioxide, ammonia, carbon dioxide, methane and nitrous oxide.

The *De Minimis* Modeling results indicated that predicted emission of PM_{2.5} (increment), and PM₁₀ (increment) are less than the respective *de minimis* concentration, and no further analysis was required.

This application was submitted to the TCEQ on May 30, 2019. The executive director has determined that the emissions of air contaminants from the existing facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, July 27, 2021 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 200-582-883. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your

computer audio or to use your phone for participating in the webinar. Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (562) 247-8422 and enter access code 993-692-678.

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 public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. 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, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and the Bell/Whittington Library located at 2400 Memorial Parkway, Portland, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas. Further information may also be obtained from voestalpine Texas, LLC, at the address stated above or by calling Ms. Gail Ridgeway, Environmental Manager at (361) 704-9000.

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.

Notice Issuance Date: June 24, 2021

TRD-202102501

Laurie Gharis
Chief Clerk

Texas Commission Environmental Quality
Filed: June 28, 2021



Notice of Water Rights Application

Notice Issued June 24, 2021

APPLICATION NO. 14-1405B; Mary C. Vehle, P.O. Box 9, Harper, Texas 78631, Applicant, seeks an amendment to Certificate of Adjudication No. 14-1405 to change the authorized diversion points and place of use to the five diversion points and place of use authorized by Certificate of Adjudication No. 14-1408. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on October 12, 2018. Additional information and fees were received on January 31, February 4, and April 26, 2019. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 3, 2019.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, stream-

flow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by July 12, 2021. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed July 12, 2021. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed July 12, 2021. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. 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. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 1405 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.*

TRD-202102463

Laurie Gharis
Chief Clerk

Texas Commission on Environmental Quality
Filed: June 25, 2021



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Scarlett Scalzo at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2020

Rumaldo Solis, P.O. Box 3323, Alice, Texas 78333

Deadline: Unexpended Contributions Report due January 15, 2021

Ashton P. Woods, 8419 Hearth Dr. Apt 38, Houston, Texas 77054

Sherry Ann Williams, P.O. Box 407, Sour Lake, Texas 77659

Charles R. Johnson, 815 Walker St. #1047, Houston, Texas 77002

Marisela Saldana, 1 Doulton Gln, San Antonio, Texas 78257-1259

Deadline: Semiannual Report due January 15, 2021

Richard Gonzales, 1404 May Dr., Edinburg, Texas 78539

Colin D. Ross, 813 Henderson St, Houston, Texas 77007

Pete Gallego, 8816 La Siesta Bend, Austin, Texas 78749

Larry McKinzie, 3930 Porter Street, Houston, Texas 77021

Adrian Garcia, P.O. Box 10087, Houston, Texas 77018

Sam N. Smith, 8600 Stirlingshire Apt 40, Houston, Texas 77078

Melissa M. Morris, 7650 Springhill St Unit 704, Houston, Texas 77021

Deborah L. Russell, 1143 Shady Ln #2127, Austin, Texas 78721

Rumaldo Solis, P.O. Box 3323, Alice, Texas 78333

Casey W. Littlejohn, 212 Mesa Dr., Glenn Heights, Texas 75154

Whitney D. Hatter, 16646 Cairngrove Ln, Houston, Texas 77084

Sandra Crenshaw, P.O. Box 15088, Dallas, Texas 75315

Natasha Demming Ruiz, 8834 Woodlyn Rd, Houston, Texas 77078

Christopher L. Graham, P.O. Box 625, DeSoto, Texas 75123

Claver T. Kamau-Imani, 11839 Moss Branch Rd., Houston, Texas 77043

Angeanette Thibodeaux, 6713 Cathcart, Houston, Texas 77091

Ruben Villarreal, P.O. BOX 1975, Pasadena, Texas 77501

Van Q. Huynh, P.O. Box 420893, Houston, Texas 77242

Deondre Moore, 9803 W Sam Houston Pkwy S 2260, Houston, Texas 77099

Undrai Fizer, P.O. Box 682242, Houston, Texas 77268

TRD-202102455

Anne Temple Peters

Executive Director

Texas Ethics Commission

Filed: June 24, 2021

◆ ◆ ◆
Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of May 2021, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ANDERSON	NATIONAL OILWELL VARCO LP ROLLIGON DIVISION	L06094	ANDERSON	18	05/10/21
BEAUMONT	BASF CORPORATION	L02016	BEAUMONT	37	05/03/21
BEAUMONT	BASF CORPORATION	L02016	BEAUMONT	37	05/03/21
CORPUS CHRISTI	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L04043	CORPUS CHRISTI	58	05/03/21
DALLAS	TEXAS INSTRUMENTS INC	L05048	DALLAS	17	05/14/21
DALLAS	UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L05947	DALLAS	47	05/03/21
DEER PARK	USA ENVIRONMENT LP	L05616	DEER PARK	12	05/07/21
DUMAS	MOORE COUNTY HOSPITAL DISTRICT	L03540	DUMAS	34	05/07/21
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE SIERRA CAMPUS	L02365	EL PASO	117	05/11/21
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE MEMORIAL CAMPUS	L02353	EL PASO	150	05/11/21
ENNIS	PRHC ENNIS LP DBA ENNIS REGIONAL MEDICAL CENTER	L05427	ENNIS	15	05/04/21
HALLSVILLE	SOUTHWESTERN ELECTRIC POWER COMPANY	L03297	HALLSVILLE	24	05/14/21
HARLINGEN	VALLEY CANCER ASSOCIATES PA	L06225	HARLINGEN	03	05/11/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HEREFORD	DEAF SMITH COUNTY HOSPITAL DISTRICT DBA HEREFORD REGIONAL MEDICAL CENTER	L03111	HEREFORD	21	05/14/21
HOUSTON	CORE LABORATORIES LP	L07088	HOUSTON	02	05/12/21
HOUSTON	THE METHODIST HOSPITAL RESEARCH INSTITUTE DBA HOUSTON METHODIST RESEARCH INSTITUTE	L06383	HOUSTON	16	05/03/21
HOUSTON	HALLIBURTON ENERGY SERVICES INC	L00442	HOUSTON	144	05/06/21
IRVING	TEXAS ONCOLOGY CARE PLLC DBA CHOICE CANCER CARE	L06985	IRVING	05	05/14/21
PASADENA	HIDDEN STAR ENERGY INC DBA CRESTONE NDT	L07034	PASADENA	03	05/03/21
SAN ANTONIO	M M ONTIVEROS MD PA	L05675	SAN ANTONIO	23	05/14/21
SAN ANTONIO	PETNET SOLUTIONS INC	L05569	SAN ANTONIO	38	05/03/21
SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO	L01279	SAN ANTONIO	175	05/10/21
TEXARKANA	TEXARKANA PET/CT IMAGING INSTITUTE LP	L05495	TEXARKANA	18	05/11/21
THE WOODLANDS	ST LUKES COMMUNITY HEALTH SERVICES	L05763	THE WOODLANDS	35	05/10/21
THROUGHOUT TX	OILPATCH NDT LLC	L06718	ANGLETON	20	05/10/21
THROUGHOUT TX	HVJ SOUTH CENTRAL TEXAS - M&J INC	L06858	AUSTIN	05	05/10/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	ASCENSION SETON MEDICAL CENTER DEPARTMENT OF RADIOLOGY	L00268	AUSTIN	173	05/14/21
THROUGHOUT TX	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	232	05/04/21
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L00448	COLLEGE STATION	158	05/10/21
THROUGHOUT TX	EYNCON LLC	L07070	ENNIS	03	05/07/21
THROUGHOUT TX	ELEMENT MATERIALS TECHNOLOGY HOUSTON INC	L06451	HOUSTON	08	05/03/21
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06662	HOUSTON	15	05/04/21
THROUGHOUT TX	ONESUBSEA PROCESSING INC	L05867	HOUSTON	16	05/04/21
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	16	05/14/21
THROUGHOUT TX	DIGIRAD IMAGING SOLUTIONS INC	L05414	HOUSTON	46	05/03/21
THROUGHOUT TX	HALLIBURTON ENERGY SERVICES INC	L02113	HOUSTON	143	05/12/21
THROUGHOUT TX	INCIPIT MEDICAL PHYSICS INC DBA MEDICAL PHYSICS CONSULTANTS	L06522	IRVING	05	05/04/21
THROUGHOUT TX	KLEINFELDER INC	L06960	IRVING	06	05/12/21
THROUGHOUT TX	MEMORIAL CITY CARDIOLOGY ASSOCIATES DBA KATY CARDIOLOGY ASSOCIATES	L05713	KATY	23	05/10/21
THROUGHOUT TX	ARCTIC TESTING AND INSPECTION LLC	L07065	LA PORTE	03	05/07/21
THROUGHOUT TX	BLUE CUBE OPERATIONS LLC	L06926	LAKE JACKSON	03	05/07/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	OILPATCH NDT LLC	L06718	PASADENA	20	05/10/21
THROUGHOUT TX	TEXAS ONCOLOGY PA DBA TEXAS CANCER CENTER SHERMAN	L05019	SHERMAN	37	05/11/21
TYLER	THE UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER	L01796	TYLER	77	05/11/21

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BAY CITY	EQUISTAR CHEMICALS LP	L03938	BAY CITY	35	05/06/21
GONZALES	SHANE M CONNOR	L05515	GONZALES	11	05/14/21

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
FREEPORT	JV INDUSTRIAL COMPANIES LTD	L06214	FREEPORT	06	05/10/21

TRD-202102532
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: June 30, 2021

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 Licensing Actions for Radioactive Materials

During the second half of May 2021, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
SAN ANTONIO	CARDIOVASCULAR & HYPERTENSION CLINIC OF SAN ANTONIO PLLC	L07112	SAN ANTONIO	00	05/26/21
THROUGHOUT TX	THERMO ELECTRON NORTH AMERICA LLC	L07111	AUSTIN	00	05/21/21
THROUGHOUT TX	VEGA AMERICAS INC	L07113	LEAGUE CITY	00	05/26/21
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	00	05/19/21

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AMARILLO	NORTHWEST TEXAS HEALTHCARE SYSTEM INC DBA NORTHWEST TEXAS HEALTHCARE SYSTEM	L02054	AMARILLO	91	05/18/21
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS SOUTH AUSTIN MEDICAL CENTER	L03273	AUSTIN	122	05/24/21
BEAUMONT	EXXON MOBIL CORPORATION	L00603	BEAUMONT	109	05/19/21
BEDFORD	TEXAS HEALTH PHYSICIANS GROUP	L06373		07	05/25/21
DALLAS	PROFESSIONAL SERVICE INDUSTRIES INC	L04940	DALLAS	23	05/25/21
FLOWER MOUND	TEXAS ONCOLOGY PA	L05526	FLOWER MOUND	32	05/25/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WILLOWBROOK HOSPITAL	L05472	HOUSTON	65	05/26/21
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN MEMORIAL CITY MEDICAL CENTER	L01168	HOUSTON	190	05/24/21
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN SOUTHWEST HOSPITAL	L00439	HOUSTON	254	05/25/21
HUMBLE	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN NORTHEAST HOSPITAL	L02412	HUMBLE	142	05/25/21
KATY	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN KATY HOSPITAL	L03052	KATY	105	05/25/21
NASSAU BAY	HOUSTON METHODIST ST JOHN HOSPITAL DBA HOUSTON METHODIST CLEAR LAKE HOSPITAL	L06650	NASSAU BAY	10	05/17/21
ORANGE	INV NYLON CHEMICALS AMERICAS LLC	L05777	ORANGE	21	05/26/21
PEARLAND	WEATHERFORD US LP	L02756	PEARLAND	31	05/27/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

PLAINVIEW	METHODIST HOSPITAL PLAINVIEW TEXAS DBA COVENANT HOSPITAL PLAINVIEW	L02493	PLAINVIEW	40	05/27/21
THE WOODLANDS	MEMORIAL HERMANN HEALTH SYSTEM	L03772	THE WOODLANDS	165	05/26/21
THROUGHOUT TX	WEATHERFORD INTERNATIONAL LLC	L00747	BENBROOK	116	05/18/21
THROUGHOUT TX	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE CARDIOLOGY CONSULTANTS OF TEXAS	L06572	DALLAS	10	05/17/21
THROUGHOUT TX	ALPHA TESTING INC	L03411	DALLAS	38	05/19/21
THROUGHOUT TX	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	141	05/25/21
THROUGHOUT TX	IRISNDT INC	L06435	DEER PARK	28	05/21/21
THROUGHOUT TX	TOLUNAY WONG ENGINEERS INC	L04848	HOUSTON	27	05/21/21
THROUGHOUT TX	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	16	05/17/21
THROUGHOUT TX	TEAM INDUSTRIAL SERVICES INC	L00087	PASADENA	253	05/24/21
WICHITA FALLS	UNITED REGIONAL HEALTH CARE SYSTEM INC	L00350	WICHITA FALLS	126	05/17/21

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	OSCS INC	L05813	CLEBURNE	14	05/21/21

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BEDFORD	TEXAS ONCOLOGY PA	L05550	BEDFORD	43	05/17/21
HOUSTON	RWG (REPAIR & OVERHAULS) USA INC	L06531	HOUSTON	04	05/21/21
MIDLAND	YELLOWJACKET OILFIELD SERVICES LLC	L06958	MIDLAND	01	05/26/21
SAN ANGELO	REECE ALBERT INC	L02296	SAN ANGELO	20	05/21/21

TRD-202102533
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: June 30, 2021

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 Licensing Actions for Radioactive Materials

During the second half of April 2021, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	SAM-CONSTRUCTION SERVICES LLC	L07108	AUSTIN	00	04/20/21
THROUGHOUT TX	READ CASED HOLE INC	L07109	HOUSTON	00	04/20/21

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BEAUMONT	METROPOLITAN CARDIOLOGY PA	L06258	BEAUMONT	03	04/27/21
BIG SPRING	ALON USA LP	L04950	BIG SPRING	18	04/21/21
CORPUS CHRISTI	FLINT HILLS RESOURCES CORPUS CHRISTI LLC	L06360	CORPUS CHRISTI	09	04/19/21
CORPUS CHRISTI	BAY AREA HEALTHCARE GROUP LTD DBA CORPUS CHRISTI MEDICAL CENTER	L04723	CORPUS CHRISTI	63	04/23/21
DALHART	DALLAM HARTLEY COUNTIES HOSPITAL DISTRICT	L06365	DALHART	03	04/19/21
EL PASO	IONETIX CORPORATION	L07100	EL PASO	01	04/23/21
EL PASO	EL PASO CARDIOLOGY ASSOCIATES PA	L05162	EL PASO	19	04/19/21
FORT WORTH	ONCOLOGY HEMATOLOGY CONSULTANTS PA	L05919	FORT WORTH	31	04/28/21
FORT WORTH	PROBE TECHNOLOGY SERVICES INC	L05112	FORT WORTH	39	04/23/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

GRAND PRAIRIE	US ECOLOGY TEXAS INC	L05518	GRAND PRAIRIE	16	04/20/21
HARKER HEIGHTS	HH/KILLEEN HEALTH SYSTEM LLC DBA SETON MEDICAL CENTER HARKER HEIGHTS	L06481	HARKER HEIGHTS	06	04/30/21
IRVING	DALLAS-FT WORTH VETERINARY IMAGING CENTER DBA ANIMAL IMAGING	L04602	IRVING	23	04/27/21
LONGVIEW	CHRISTUS GOOD SHEPHERD MEDICAL CENTER	L06902	LONGVIEW	07	04/19/21
MARSHALL	CHRISTUS GOOD SHEPHERD MEDICAL CENTER	L02572	MARSHALL	46	04/19/21
MIDLAND	OLIVIER INTERNATIONAL LLC	L07031	MIDLAND	01	04/23/21
ORANGE	SOLVAY SPECIALTY POLYMERS USA LLC	L06515	ORANGE	04	04/27/21
PARIS	HEART CLINIC OF PARIS PA	L06013	PARIS	06	04/27/21
PASADENA	BAYPORT POLYMERS LLC	L06922	PASADENA	10	04/21/21
TEXAS CITY	BLANCHARD REFINING COMPANY LLC	L06526	TEXAS CITY	24	04/28/21
THE WOODLANDS	METHODIST HEALTH CENTER DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	07	04/26/21
THROUGHOUT TX	ALAMO PRESSURE PUMPING LLC	L07094	ARLINGTON	01	04/20/21
THROUGHOUT TX	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	106	04/28/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	TEXAS DEPARTMENT OF TRANSPORTATION MATERIALS & TESTS DIVISION	L00197	AUSTIN	197	04/15/21
THROUGHOUT TX	INSPECTION ASSOCIATES INC	L06601	CYPRESS	19	04/27/21
THROUGHOUT TX	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L06578	DALLAS	08	04/26/21
THROUGHOUT TX	ALS MAVERICK TESTING LABORATORIES INC	L06608	DEER PARK	13	04/27/21
THROUGHOUT TX	D&S ENGINEERING LABS LLC	L06677	DENTON	18	04/23/21
THROUGHOUT TX	LANCASTER REGIONAL HOSPITAL LP DBA CRESCENT MEDICAL CENTER LANCASTER	L06847	FARMERS BRANCH	07	04/19/21
THROUGHOUT TX	SENTINEL INTEGRITY SOLUTIONS INC	L06735	HOUSTON	08	04/28/21
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04942	HOUSTON	31	04/20/21
THROUGHOUT TX	HVJ ASSOCIATES INC	L03813	HOUSTON	68	04/27/21
THROUGHOUT TX	TEXAS GAMMA RAY LLC DBA TGR INDUSTRIAL SERVICES	L05561	HOUSTON	124	04/27/21
THROUGHOUT TX	ATLAS TECHNICAL CONSULTANTS LLC	L06407	LUBBOCK	22	04/16/21
THROUGHOUT TX	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	15	04/28/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L05412	ROCKWALL	15	04/26/21
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04946	SAN ANTONIO	21	04/21/21
VICTORIA	CITIZENS MEDICAL CENTER	L00283	VICTORIA	103	04/27/21

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BRYAN	TEXAS MUNICIPAL POWER AGENCY	L02913	BRYAN	28	04/21/21
HOUSTON	GULF COAST CANCER AND DIAGNOSTIC CENTER AT SOUTHEAST INC	L05194	HOUSTON	17	04/26/21

TRD-202102536
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: June 30, 2021

TRD-202102531
 James Person
 General Counsel
 Texas Department of Insurance
 Filed: June 30, 2021

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for Metropolitan Group Property and Casualty Insurance Company, a foreign fire and/or casualty company, to change its name to Farmers Group Property and Casualty Insurance Company. The home office is in Warwick, Rhode Island.

Application for Metropolitan Direct Property and Casualty Insurance Company, a foreign fire and/or casualty company, to change its name to Farmers Direct Property and Casualty Insurance Company. The home office is in Warwick, Rhode Island.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

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Texas Lottery Commission

Scratch Ticket Game Number 2297 "GREAT 8s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2297 is "GREAT 8s". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2297 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2297.

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: 01, 02, 03, 04, 05, 06, 07, 09, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, STAR SYMBOL, CHERRY SYMBOL, HEART SYMBOL, MOON SYMBOL, DIAMOND SYMBOL, LEMON SYMBOL, SUN SYMBOL, GOLD BAR SYMBOL, HORSESHOE SYMBOL, ANCHOR SYMBOL, BOAT SYMBOL, 8 SYMBOL, LIGHTNING BOLT SYMBOL, DICE SYMBOL, CACTUS SYMBOL, CLUB SYMBOL, RAINBOW SYMBOL, BANANA SYMBOL, PINEAPPLE SYMBOL, ELEPHANT SYMBOL, UMBRELLA SYMBOL, WATERMELON SYMBOL, SPADE

SYMBOL, WISHBONE SYMBOL, STRAWBERRY SYMBOL, 8 SYMBOL, POT OF GOLD SYMBOL, CROWN SYMBOL, FISH SYMBOL, BOOT SYMBOL, PIGGY BANK SYMBOL, APPLE SYMBOL, LADYBUG SYMBOL, TREE SYMBOL, BIRD SYMBOL, TURTLE SYMBOL, HAT SYMBOL, GRAPES SYMBOL, TROPHY SYMBOL, 8 SYMBOL, 88 SYMBOL, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$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. 2297 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

29	TWNI
30	TRTY
STAR SYMBOL	STAR
CHERRY SYMBOL	CHERRY
HEART SYMBOL	HEART
MOON SYMBOL	MOON
DIAMOND SYMBOL	DIAMND
LEMON SYMBOL	LEMON
SUN SYMBOL	SUN
GOLD BAR SYMBOL	BAR
HORSESHOE SYMBOL	HRSHOE
ANCHOR SYMBOL	ANCHOR
BOAT SYMBOL	BOAT
8 SYMBOL	WIN\$
LIGHTNING BOLT SYMBOL	BOLT
DICE SYMBOL	DICE
CACTUS SYMBOL	CACTUS
CLUB SYMBOL	CLUB
RAINBOW SYMBOL	RAINBW
BANANA SYMBOL	BANANA
PINEAPPLE SYMBOL	PNAPLE
ELEPHANT SYMBOL	ELPHT
UMBRELLA SYMBOL	UMBRLA
WATERMELON SYMBOL	WTRMLN
SPADE SYMBOL	SPADE
WISHBONE SYMBOL	WSHBNE
STRAWBERRY SYMBOL	STRWBY
8 SYMBOL	EGT

POT OF GOLD SYMBOL	GOLD
CROWN SYMBOL	CROWN
FISH SYMBOL	FISH
BOOT SYMBOL	BOOT
PIGGY BANK SYMBOL	PGYBNK
APPLE SYMBOL	APPLE
LADYBUG SYMBOL	LDYBUG
TREE SYMBOL	TREE
BIRD SYMBOL	BIRD
TURTLE SYMBOL	TURTLE
HAT SYMBOL	HAT
GRAPES SYMBOL	GRAPES
TROPHY SYMBOL	TROPHY
8 SYMBOL	EIGHT
88 SYMBOL	DBL
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$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 (2297), 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: 2297-0000001-001.

H. Pack - A Pack of the "GREAT 8s" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 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 075 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 "GREAT 8s" Scratch Ticket Game No. 2297.

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 "GREAT 8s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-four (54) Play Symbols. GAME 1: If a player reveals an "8" Play Symbol, the player wins the prize for that symbol. GAME 2: If the player reveals 3 "8" Play Symbols in any one row, column or diagonal line, the player wins the PRIZE. GAME 3: If the player reveals 3 "8" Play Symbols in any one row, column or diagonal line, the player wins the PRIZE. GAME 4: If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals an "88" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-four (54) 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 fifty-four (54) 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 fifty-four (54) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-four (54) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to eighteen (18) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning eighteen (18) times.

E. GENERAL: On all Tickets, a Prize Symbol will not appear more than three (3) times across all GAMES, except as required by the prize structure to create multiple wins.

F. GENERAL: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket across all GAMES.

G. GAME 1: GAME 1 can win up to six (6) times.

H. GAME 1: The "8" (WINS) Play Symbol will win the corresponding prize for that symbol.

I. GAME 1: No matching non-winning Play Symbols will appear in GAME 1.

J. GAME 1: A Prize Symbol will not appear more than two (2) times in GAME 1, except as required by the prize structure to create multiple wins.

K. GAME 2: GAME 2 can win one (1) time.

L. GAME 2: On winning and non-winning GAMES, the "8" (EGT) Play Symbol will appear four (4) or five (5) times.

M. GAME 2: On winning and non-winning GAMES, there will not be more than two (2) matching Play Symbols other than the "8" (EGT) Play Symbol which can appear four (4) or five (5) times.

N. GAME 2: Non-winning GAMES will not contain four (4) matching Play Symbols in all four (4) corners.

O. GAME 2: Winning GAMES will only contain one (1) winning combination.

P. GAME 2: Winning GAMES will have three (3) matching "8" (EGT) Play Symbols in the same row, column or diagonal line.

Q. GAME 3: GAME 3 can win one (1) time.

R. GAME 3: On winning and non-winning GAMES, the "8" (EIGHT) Play Symbol will appear four (4) or five (5) times.

S. GAME 3: On winning and non-winning GAMES, there will not be more than two (2) matching Play Symbols other than the "8" (EIGHT) Play Symbol which can appear four (4) or five (5) times.

T. GAME 3: Non-winning GAMES will not contain four (4) matching Play Symbols in all four (4) corners.

U. GAME 3: Winning GAMES will only contain one (1) winning combination.

V. GAME 3: Winning GAMES will have three (3) matching "8" (EIGHT) Play Symbols in the same row, column or diagonal line.

W. GAME 4: GAME 4 can win up to ten (10) times.

X. GAME 4: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

Y. GAME 4: GAMES winning more than one (1) time will use as many WINNING NUMBERS play spots as possible to create matches, unless restricted by other parameters, play action or prize structure.

Z. GAME 4: No matching WINNING NUMBERS Play Symbols will appear in GAME 4.

AA. GAME 4: The "88" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

BB. GAME 4: The "88" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

CC. GAME 4: The "88" (DBL) Play Symbol will never appear more than once in GAME 4.

DD. GAME 4: The "88" (DBL) Play Symbol will never appear on a non-winning GAME 4.

EE. GAME 4: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 10 and \$10, 15 and \$15 and 20 and \$20).

FF. GAME 4: On non-winning GAMES, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol and the "88" (DBL) Play Symbol will never appear.

GG. GAME 4: A Prize Symbol will not appear more than two (2) times in GAME 4, except as required by the prize structure to create multiple wins.

2.3 Procedure for Claiming Prizes.

A. To claim a "GREAT 8s" Scratch Ticket Game prize of \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$250 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, \$250 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 "GREAT 8s" 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 "GREAT 8s" 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 "GREAT 8s" 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 "GREAT 8s" 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 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2297. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2297 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	992,000	7.26
\$15.00	240,000	30.00
\$20.00	192,000	37.50
\$40.00	48,000	150.00
\$50.00	40,000	180.00
\$100	16,000	450.00
\$250	2,100	3,428.57
\$500	1,100	6,545.45
\$1,000	45	160,000.00
\$100,000	5	1,440,000.00

*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 4.70. 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. 2297 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. 2297, 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-202102514
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 29, 2021



Scratch Ticket Game Number 2336 "POWER 10X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2336 is "POWER 10X". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2336 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2336.

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: 2X SYMBOL, 3X SYMBOL, 5X SYMBOL, 10X SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, COIN SYMBOL, JOKER SYMBOL, KEY SYMBOL, CLOVER SYMBOL, RING SYMBOL, CHERRY SYMBOL, MONEYBAG

SYMBOL, LADYBUG SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, HEART SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, SOMBRERO SYMBOL, DIAMOND SYMBOL, LEMON SYMBOL, BANANA SYMBOL, MELON SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, PALM TREE SYMBOL, HAPPY FACE SYMBOL, ANCHOR SYMBOL, FORTUNE COOKIE SYMBOL, LIGHTNING BOLT SYMBOL, \$10.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$250,000.

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. 2336 - 1.2D

PLAY SYMBOL	CAPTION
2X SYMBOL	WINX2
3X SYMBOL	WINX3
5X SYMBOL	WINX5
10X SYMBOL	WINX10
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HRSHOE
POT OF GOLD SYMBOL	PTGOLD
COIN SYMBOL	COIN
JOKER SYMBOL	JOKER
KEY SYMBOL	KEY
CLOVER SYMBOL	CLOVER
RING SYMBOL	RING
CHERRY SYMBOL	CHRY
MONEYBAG SYMBOL	MNBAG
LADYBUG SYMBOL	LBUG
WISHBONE SYMBOL	BONE
CROWN SYMBOL	CROWN
HEART SYMBOL	HEART
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
SOMBRERO SYMBOL	SMBRO
DIAMOND SYMBOL	DIMND
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA

MELON SYMBOL	MELN
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
PALM TREE SYMBOL	PALM
HAPPY FACE SYMBOL	SMILE
ANCHOR SYMBOL	ANCHR
FORTUNE COOKIE SYMBOL	COOKIE
LIGHTNING BOLT SYMBOL	WIN\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$250,000	250TH

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 (2336), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2336-0000001-001.

H. Pack - A Pack of the "POWER 10X" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "POWER 10X" Scratch Ticket Game No. 2336.

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 "POWER 10X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-two (52) Play Symbols. FIND INSTRUCTIONS - Games 1-23: If a player reveals a "BOLT" Play Symbol, the player wins the PRIZE for that GAME. POWER BONUS INSTRUCTIONS - If the player reveals 2 matching prize amounts in the same POWER BONUS area, the player wins that amount. POWER UP! BOX INSTRUCTIONS - The player scratches the POWER UP! box to reveal 2 MULTIPLIER SYMBOLS. If the player reveals 2 matching MULTIPLIER SYMBOLS, the player multiplies the total prize won on the Ticket by that multiplier and wins that amount. For example, revealing 2 "10X" MULTIPLIER SYMBOLS will multiply the total prize won by 10 TIMES. 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 fifty-two (52) 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 fifty-two (52) 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 fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-two (52) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. FIND: No duplicate non-winning Play Symbols on a Ticket.

D. FIND: A non-winning Prize Symbol will never match a winning Prize Symbol.

E. FIND: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. FIND: The "BOLT" (WIN\$) Play Symbol will only appear in winning GAMES as dictated by the prize structure.

G. POWER BONUS: A non-winning Prize Symbol in one (1) POWER BONUS play area will never match a winning Prize Symbol in the other POWER BONUS play area.

H. POWER BONUS: There will be no matching non-winning POWER BONUS Prize Symbols in the separate POWER BONUS play areas on a Ticket.

I. POWER BONUS: Prizes of \$10, \$20, \$25, \$30, \$50, \$100, \$200 and \$500 can be won in the POWER BONUS play areas.

J. POWER UP! BOX: Two (2) matching POWER UP! MULTIPLIER SYMBOLS Play Symbols of "2X" (WINX2), "3X" (WINX3), "5X" (WINX5), or "10X" (WINX10) will only appear on winning Tickets, as dictated by the prize structure.

K. POWER UP! BOX: Tickets that do not win in the "POWER UP!" play area will display two (2) different POWER UP! MULTIPLIER SYMBOLS Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "POWER 10X" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$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 \$30.00, \$50.00, \$100, \$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 "POWER 10X" Scratch Ticket Game prize of \$1,000, \$10,000 or \$250,000, 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 "POWER 10X" 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 "POWER 10X" 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 "POWER 10X" 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 15,600,000 Scratch Tickets in Scratch Ticket Game No. 2336. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2336 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	1,638,000	9.52
\$20.00	1,014,000	15.38
\$30.00	702,000	22.22
\$50.00	312,000	50.00
\$100	234,000	66.67
\$200	41,990	371.52
\$500	4,810	3,243.24
\$1,000	70	222,857.14
\$10,000	12	1,300,000.00
\$250,000	6	2,600,000.00

*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 3.95. 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. 2336 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. 2336, 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-202102512
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 29, 2021



Scratch Ticket Game Number 2344 "500X LOTERIA SPECTACULAR"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2344 is "500X LOTERIA SPECTACULAR". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2344 shall be \$50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2344.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: AIRPLANE SYMBOL, ARMORED CAR SYMBOL, ATM CARD SYMBOL, BANK SYMBOL, BIRD SYMBOL, COINS SYMBOL, FLAG SYMBOL, CROWN SYMBOL, RABBIT FOOT SYM-

BOL, GOLD BAR SYMBOL, HEART SYMBOL, KEY SYMBOL, LAMP SYMBOL, MOON SYMBOL, RAINBOW SYMBOL, RING SYMBOL, SEVEN SYMBOL, SPADE SYMBOL, SUN SYMBOL, WISHBONE SYMBOL, THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BICYCLE SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE BUTTERFLY SYMBOL, THE CACTUS SYMBOL, THE CARDINAL SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COW SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE DESERT SYMBOL, THE FIRE SYMBOL, THE FOOTBALL SYMBOL, THE GEM SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONESTAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RACE CAR SYMBOL, THE RATTLESNAKE SYMBOL, THE ROAD RUNNER SYMBOL, THE SADDLE SYMBOL, THE

SHIP SYMBOL, THE SHOES SYMBOL, THE SOCCER BALL SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, BAR SYMBOL, BELL SYMBOL, BILL SYMBOL, CAMERA SYMBOL, CANDY SYMBOL, CHERRY SYMBOL, CLOVER SYMBOL, DICE SYMBOL, DOLLAR SIGN SYMBOL, DRUM SYMBOL, GEM SYMBOL, GIFT SYMBOL, CHEST SYMBOL, MELON SYMBOL, NECKLACE SYMBOL, PEARL SYMBOL, SHELL SYMBOL, STAR SYMBOL, VAULT SYMBOL, WATER BOTTLE SYMBOL, \$50.00, \$75.00, \$100, \$150, \$200, \$250, \$500, \$1,000, \$5,000, \$25,000 and \$3,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2344 - 1.2D

PLAY SYMBOL	CAPTION
AIRPLANE SYMBOL	AIRPLANE
ARMORED CAR SYMBOL	ARMCAR
ATM CARD SYMBOL	CARD
BANK SYMBOL	BANK
BIRD SYMBOL	BIRD
COINS SYMBOL	COINS
FLAG SYMBOL	FLAG
CROWN SYMBOL	CROWN
RABBIT FOOT SYMBOL	FOOT
GOLD BAR SYMBOL	GOLDBAR
HEART SYMBOL	HEART
KEY SYMBOL	KEY
LAMP SYMBOL	LAMP
MOON SYMBOL	MOON
RAINBOW SYMBOL	RAINBOW
RING SYMBOL	RING
SEVEN SYMBOL	SEVEN
SPADE SYMBOL	SPADE
SUN SYMBOL	SUN
WISHBONE SYMBOL	WISHBONE
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BICYCLE SYMBOL	THE BICYCLE
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR

THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CACTUS SYMBOL	THE CACTUS
THE CARDINAL SYMBOL	THECARDINAL
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COW SYMBOL	THE COW
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE DESERT SYMBOL	THE DESERT
THE FIRE SYMBOL	THE FIRE
THE FOOTBALL SYMBOL	THEFOOTBALL
THE GEM SYMBOL	THE GEM
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONESTAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THEMOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG
THE PECAN TREE SYMBOL	THEPECANTREE

THE PIÑATA SYMBOL	THE PIÑATA
THE RACE CAR SYMBOL	THERACECAR
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROAD RUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHIP SYMBOL	THE SHIP
THE SHOES SYMBOL	THE SHOES
THE SOCCER BALL SYMBOL	THESOCCERBALL
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
BAR SYMBOL	BAR
BELL SYMBOL	BELL
BILL SYMBOL	BILL
CAMERA SYMBOL	CAMERA
CANDY SYMBOL	CANDY
CHERRY SYMBOL	CHERRY
CLOVER SYMBOL	CLOVER
DICE SYMBOL	DICE
DOLLAR SIGN SYMBOL	DOLLAR
DRUM SYMBOL	DRUM
GEM SYMBOL	GEM
GIFT SYMBOL	GIFT
CHEST SYMBOL	CHEST
MELON SYMBOL	MELON

NECKLACE SYMBOL	NECKLACE
PEARL SYMBOL	PEARL
SHELL SYMBOL	SHELL
STAR SYMBOL	STAR
VAULT SYMBOL	VAULT
WATER BOTTLE SYMBOL	WATER
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$200	TOHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$25,000	25TH
\$3,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2344), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2344-0000001-001.

H. Pack - A Pack of the "500X LOTERIA SPECTACULAR" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "500X LOTERIA SPECTACULAR" Scratch Ticket Game No. 2344.

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 eighty-seven (87) Play Symbols. A prize winner in the "500X LOTERIA SPECTACULAR" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAY AREA 1 INSTRUCTIONS (BONUS): If the player reveals 2 matching symbols in the BONUS \$50, the player wins \$50. If the player reveals 2 matching symbols in the BONUS \$100, the player wins \$100. If the player reveals 2 matching symbols in the BONUS

\$200, the player wins \$200. If the player reveals 2 matching symbols in the BONUS \$500, the player wins \$500. If the player reveals 2 matching symbols in the BONUS \$1,000, the player wins \$1,000. PLAY AREA 2 INSTRUCTIONS (PLAYBOARD): (1) The player completely scratches the CALLER'S CARD to reveal 27 symbols. (2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. (3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAY AREA 3 INSTRUCTIONS (GAMES 1 - 8): The player scratches ONLY the symbols on GAMES 1 - 8 that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. PLAY AREA 4 INSTRUCTIONS (2X, 5X, 10X, 50X, 500X MULTIPLIER): The player scratches the 2X, 5X, 10X, 50X and 500X MULTIPLIER boxes to reveal 2 symbols in each box. If the player reveals 2 matching symbols in the same MULTIPLIER box, the player multiplies the total prize won on the ticket by that MULTIPLIER and wins that amount. For example, revealing 2 "STAR" Play Symbols in the 10X MULTIPLIER box will multiply the total prize won by 10 TIMES. INSTRUCCIONES PARA ÁREA DE JUEGO 1 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO \$50, el jugador gana \$50. Si el jugador revela 2 símbolos iguales en el área de BONO \$100, el jugador gana \$100. Si el jugador revela 2 símbolos iguales en el área de BONO \$200, el jugador gana \$200. Si el jugador revela 2 símbolos iguales en el área de BONO \$500, el jugador gana \$500. Si el jugador revela 2 símbolos iguales en el área de BONO \$1,000, el jugador gana \$1,000. INSTRUCCIONES PARA ÁREA DE JUEGO 2 (TABLA DE JUEGO): (1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 27 símbolos. (2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. (3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. INSTRUCCIONES PARA ÁREA DE JUEGO 3 (JUEGOS 1 - 8): El jugador SOLAMENTE raspa los símbolos en los JUEGOS 1 - 8 que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. INSTRUCCIONES PARA ÁREA DE JUEGO 4 (MULTIPLICADOR 2X, 5X, 10X, 50X, 500X): El jugador raspa las cajas de MULTIPLICADOR 2X, 5X, 10X, 50X y 500X para revelar 2 símbolos en cada caja. Si el jugador revela 2 símbolos iguales en la misma caja de MULTIPLICADOR, el jugador multiplica el premio total ganado en el boleto por ese MULTIPLICADOR y gana esa cantidad. Por ejemplo, revelando 2 Símbolos de Juego de "ESTRELLA" en la caja MULTIPLICADOR 10X multiplicará por 10 el premio total ganado. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-seven (87) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-seven (87) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-seven (87) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-seven (87) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to sixteen (16) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAY AREA 1 (BONUS)/ÁREA DE JUEGO 1 (BONO): There will never be matching Play Symbols in the BONUS/BONO play areas, unless used as a winning play.

D. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

E. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD/TABLA DE JUEGO play area.

F. PLAY AREA 2 (PLAYBOARD)/ÁREA DE JUEGO 2 (TABLA DE JUEGO): No matching Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

G. PLAY AREA 4 (2X, 5X, 10X, 50X, 500X MULTIPLIER)/ÁREA DE JUEGO 4 (MULTIPLICADOR 2X, 5X, 10X, 50X, 500X): There will never be matching Play Symbols in the MULTIPLIER/MULTIPLICADOR play areas, unless used as a winning play.

2.3 Procedure for Claiming Prizes.

A. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize of \$50.00, \$75.00, \$100, \$150, \$200, \$250, \$300 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$75.00, \$100, \$150, \$200, \$250, \$300 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize of \$1,000, \$5,000, \$10,000 or \$25,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "500X LOTERIA SPECTACULAR" Scratch Ticket Game top level prize of \$3,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). The Texas Lottery shall file the appropriate income

reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "500X LOTERIA SPECTACULAR" Scratch Ticket Game prize, including the top level prize of \$3,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "500X LOTERIA SPECTACULAR" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "500X LOTERIA SPECTACULAR" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified

in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the

Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2344. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2344 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50.00	1,008,000	10.00
\$75.00	504,000	20.00
\$100	504,000	20.00
\$150	504,000	20.00
\$200	252,000	40.00
\$250	252,000	40.00
\$300	67,200	150.00
\$500	51,912	194.17
\$1,000	2,520	4,000.00
\$5,000	672	15,000.00
\$10,000	100	100,800.00
\$25,000	32	315,000.00
\$3,000,000	4	2,520,000.00

*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 3.20. 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. 2344 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. 2344, 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-202102513
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 29, 2021

◆ ◆ ◆
Panhandle Regional Planning Commission

Consultant Proposal Request--Auditing Services

Notice of Invitation for Proposal

Panhandle Regional Planning Commission (PRPC) is soliciting proposals to perform auditing services for fiscal years ending September 30, 2021, 2022, and 2023 with the option of a year-by-year extension for the two subsequent fiscal years September 30, 2024, and 2025 in accordance with the provisions of 2 CFR 200 Uniform Guidance. Detailed information regarding the project is set forth in the Request for Proposal (RFP) which will be available on or after June 22, 2021, at the following location:

Trenton C. Taylor, CPA
Finance Director
Panhandle Regional Planning Commission
P.O. Box 9257
Amarillo, Texas 79105
ttaylor@theprpc.org
(806) 372-3381

The deadline for submission of proposals in response to this request will be 5:00 p.m. on Thursday July 15, 2021.

PRPC reserves the right to accept or reject any or all proposals submitted. PRPC is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractual alternatives. PRPC will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit PRPC to pay any costs incurred prior to the execution of a contract. Issuance of this material in no way obligates PRPC to award a contract or pay any cost incurred in the preparation of a response. PRPC specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where PRPC feels it to be in its own best interest.

TRD-202102451
Trenton Taylor
Finance Director
Panhandle Regional Planning Commission
Filed: June 24, 2021

◆ ◆ ◆
**Governmental Financial Audit Services - Public Notice -
Village of Lake Tanglewood**

The Village of Lake Tanglewood (Village) is requesting proposals in response to this Request for Proposals (RFP) from qualified firms of certified public accountant to audit the Village's financial statements for the fiscal year ending September 30, 2021, with the option of auditing its financial statements for each of the two subsequent fiscal years. These audits are to be performed in accordance with Generally Accepted Auditing Standards. All services provided will be in accordance with the RFP. A separate contract detailing the terms and conditions of the services will be duly executed between the Village and the selected firm.

A copy of the Request for Proposals may be obtained from the Village of Lake Tanglewood at kpaul@theprpc.org, ATTN: Katie Paul, (806) 372-3381.

Please submit your response for these proposed services to the address below:

Katie Paul
Contract City Manager
415 SW 8th
Amarillo, Texas 79105

Responses must be received no later than 5:00 p.m. on Monday, July 12th, 2021, to be considered. The Village of Lake Tanglewood will hold a meeting of the Board of Aldermen at 6:00 p.m., at 1000 Tanglewood Drive, Amarillo, Texas 79118 on Monday, August 9th, 2021, and may award the contract at that time.

The Village of Lake Tanglewood is an Affirmative Action/Equal Opportunity Employer.

TRD-202102453
Katie Paul
LGS Coordinator
Panhandle Regional Planning Commission
Filed: June 24, 2021

◆ ◆ ◆
**Public Notice - Architectural Services for Donley County,
Texas**

Donley County is intent upon historically repairing the Donley County Courthouse which was previously restored through the Texas Courthouse Rehabilitation Program. The County desires to complete repairs to the Courthouse and is now seeking to contract with a qualified architectural firm or individual (registered to practice in the State of Texas) to prepare the preliminary/final project design plans, write the project specifications, conduct all necessary interim/final inspections and perform other services, as appropriate, to ensure the successful completion of the project.

A copy of the County's Request for Qualifications may be obtained from the County Judge's Office office at 300 Sully Street, Clarendon, Texas, 79226 or Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105, ATTN: Katie Paul, (806) 372-3381.

Statements of Qualifications should be submitted to the Donley County Judge, Dr. John Howard.

Completed responses must be received by the County no later than 4:00 p.m. on Monday, July 19th, 2021, to be considered. Donley County reserves the right to negotiate with any and all architects or firms that sub-

mit a response, as per the Texas Professional Services Procurement Act and Office of Management and Budget Circular No. A-102. All engineers/firms must not be debarred or suspended from the Excluded Parties List System (EPLS) of the System for Award Management (SAM) www.sam.gov.

Donley County is an Affirmative Action/Equal Opportunity Employer.

TRD-202102452

Katie Paul

LGS Coordinator

Pandhandle Regional Planning Commission

Filed: June 24, 2021



Public Utility Commission of Texas

Notice of Proceeding for 2021 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2021 compliance proceeding initiated by the Public Utility Commission of Texas (commission) for eligible telecommunications providers (ETP) and resale eligible telecommunications providers (RETP) to attest to the proper use of Texas universal service funds (TUSF).

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The commission initiated this proceeding under Public Utility Regulatory Act (PURA) §56.030 and 16 Texas Administrative Code (TAC) §26.417 and §26.419. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from the universal service fund program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP and RETP receiving support from the TUSF. In accordance with PURA §56.030 and 16 TAC §26.417 and §26.419, each ETP and RETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds. All carriers in Texas requesting certification by the commission shall submit an affidavit by September 1, 2021.

Carriers designated as ETPs and RETPs may contact the commission 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. Persons contacting the commission regarding this proceeding should refer to Project Number 32567.

TRD-202102493

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: June 28, 2021



Notice of Proceeding for 2021 Annual State Certification for Designation of Common Carriers as Eligible

Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2021 certification proceeding initiated by the Public Utility Commission of Texas (commission) for state certification of common carriers as eligible telecommunications carriers to receive federal universal service funds.

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

Under 47 Code of Federal Regulations §54.314, the commission annually certifies that all federal high-cost support provided to carriers in Texas was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The commission must file the certification with the Federal Communications Commission and the Universal Service Administrative Company by October 1 each year in order for ETCs to receive federal high-cost support. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support. Under 16 Texas Administrative Code §26.418(k), each carrier shall provide the commission with a sworn affidavit certifying that the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission must submit an affidavit by September 1, 2021.

Carriers seeking to be certified may contact the commission 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. Persons contacting the commission regarding this proceeding should refer to Project Number 24481.

TRD-202102494

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: June 28, 2021



Texas Department of Transportation

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a virtual public hearing on Monday, August 2, 2021, at 3:00 p.m. Central Standard Time (CST) via electronic means. Instructions for accessing the hearing will be published on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>. The purpose of the hearing is to receive public comments on the development of the 2022 Unified Transportation Program (UTP), including the highway project selection process related to the UTP.

Transportation Code, §201.991 provides that the department shall develop a UTP covering a period of 10 years to guide the development and authorize construction of transportation projects. Transportation Code, §201.602 requires the Texas Transportation Commission (commission) to annually conduct a hearing on its highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions. The commission has adopted rules located in Title 43, Texas Administrative Code, Chapter

16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to the project selection process and the development of the UTP.

Information regarding the proposed 2022 UTP and highway project selection process will be available on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>.

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division at (800) 687-8108 no later than Friday, July 30, 2021. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to par-

ticipate are encouraged to contact the Transportation Planning and Programming Division at (800) 687-8108. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate these needs.

Interested parties who are unable to participate may submit written comments regarding the proposed 2022 UTP to the Texas Department of Transportation, Attention: TPP-UTP, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the proposed 2022 UTP by e-mail to UTP-PublicComments@txdot.gov or through the online options that will be available on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/unified-transportation-program.html>.

In order to be considered, comments must be received by 4:00 p.m. on Monday, August 9, 2021.

TRD-202102527

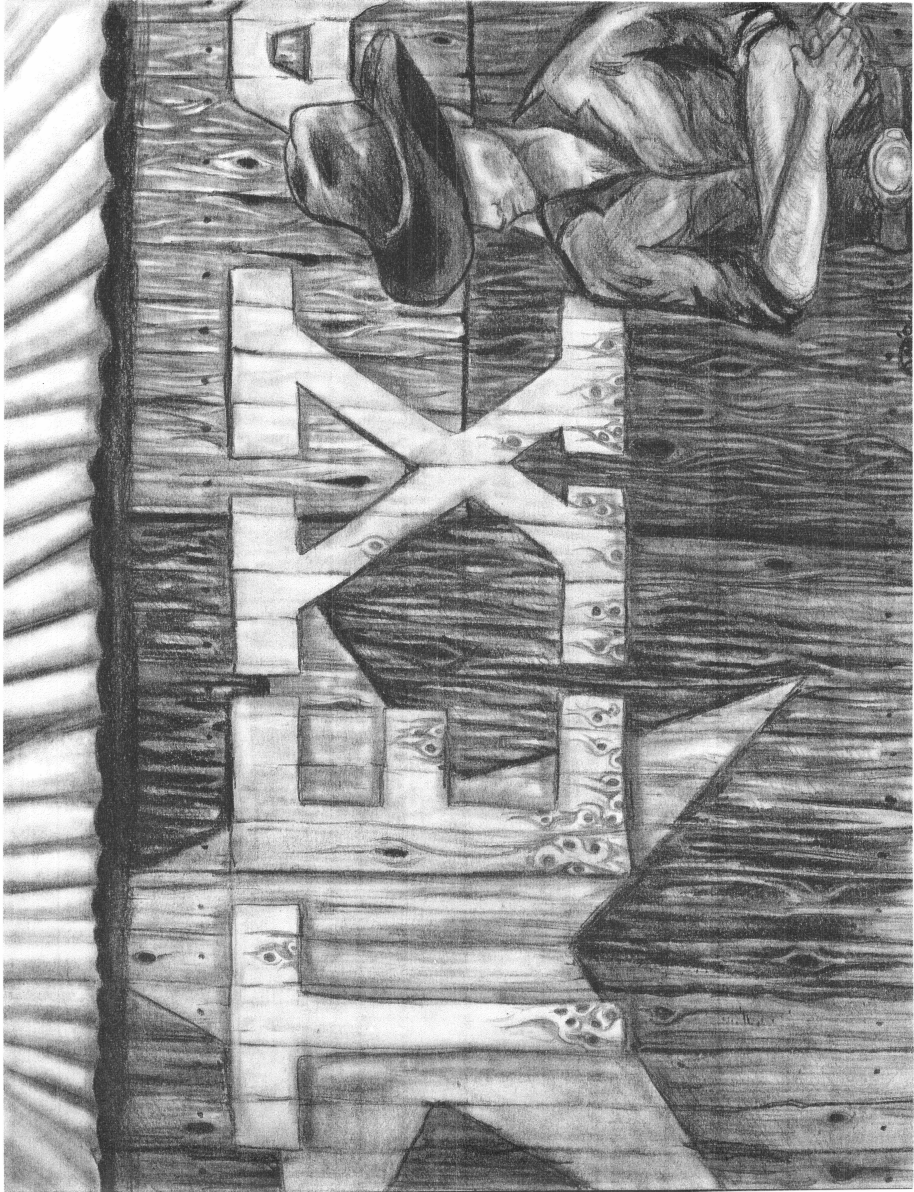
Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: June 30, 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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