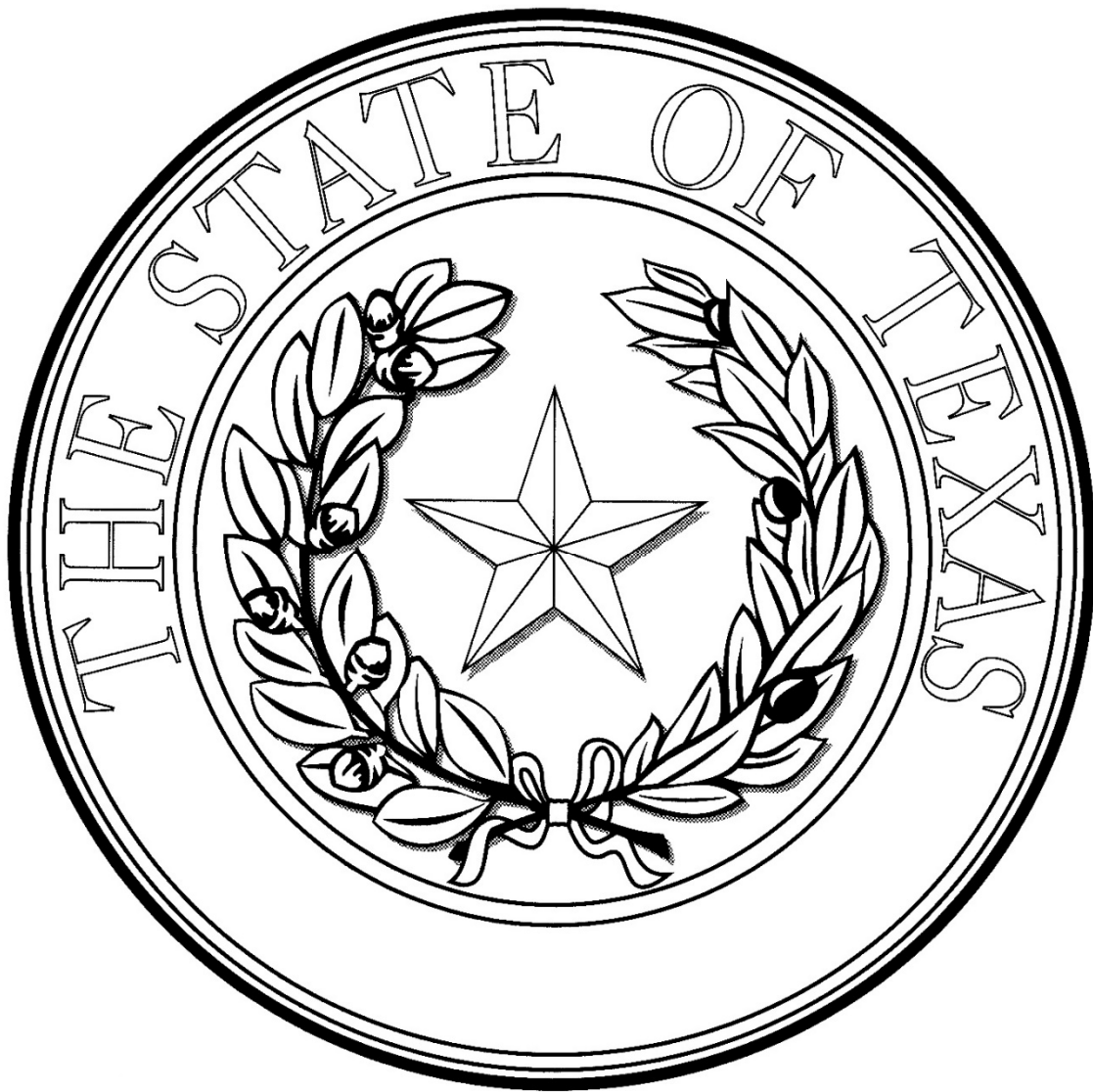

TEXAS REGISTER

Volume 46 Number 45

November 5, 2021

Pages 7461 - 7678



TEXAS REGISTER

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

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

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

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

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

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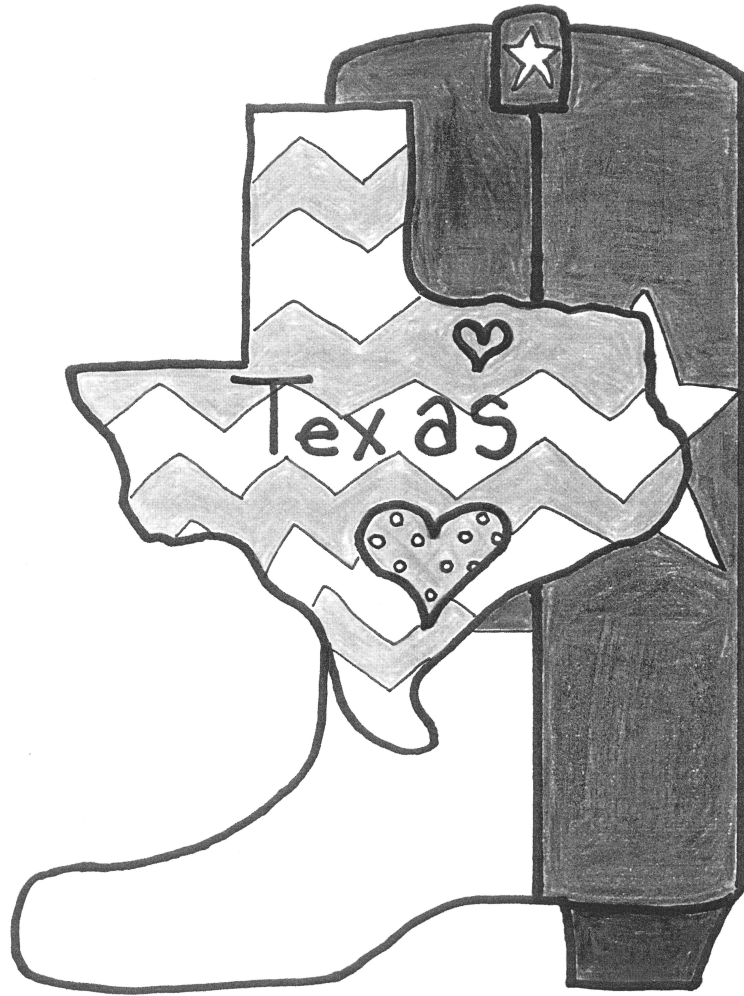
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THE GOVERNOR

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 October 14, 2021

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2023, as indicated: John A. "Tony" Curry of Dallas, Texas (replacing Momar A. "Mo" Olatunde Mattocks of Buda, who resigned).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2023, John D. Guevara of Harlingen, Texas (replacing Conrad A. Bodden of Rancho Viejo, who resigned).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2023, John P. Mulholland of Missouri City, Texas (replacing Daniel J. "Dan" Winston of McKinney, who resigned).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2025, James A. "Jim" Allmon of Waco, Texas (replacing Terry W. Stevens of Waco, whose term expired).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2025, Aimee P. Burnett of Southlake, Texas (Ms. Burnell is being reappointed).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2025, Shelly Lesikar deZevallos, Ed.D. of Houston, Texas (replacing Robert D. "Bob" Mitchell of Pearland, whose term expired).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2025, Lauren A. Dreyer of Eddy, Texas (Ms. Dreyer is being reappointed).

Appointed to the Aerospace and Aviation Advisory Committee, for a term to expire September 1, 2025, Jennifer Kurth Williamson of Southlake, Texas (Ms. Williamson is being reappointed).

Appointments for October 21, 2021

Appointed as the Secretary of State, for a term to expire January 16, 2023, John B. Scott of Fort Worth, Texas (replacing Ruth Ruggero Hughs of Austin, who resigned).

Appointed to the Texas State Board of Plumbing Examiners, for a term to expire September 5, 2027, Darren K. Black of Abilene, Texas (replacing Ben R. Friedman of Farmers Branch, whose term expired).

Appointed to the Texas State Board of Plumbing Examiners, for a term to expire September 5, 2027, Milton R. Gutierrez of Georgetown, Texas (Chaplain Gutierrez is being reappointed).

Appointed to the Texas State Board of Plumbing Examiners, for a term to expire September 5, 2027, Thomas O. "Tommy" Rice, Jr. of Spring, Texas (replacing Robert F. "Robi" Jalnos of San Antonio, whose term expired).

Appointments for October 22, 2021

Appointed to the North Texas Tollway Authority Board of Directors, for a term to expire August 31, 2023, Frankie "Lynn" Gravley of Gunter, Texas (Mr. Gravley is being reappointed).

Appointed as presiding officer of the North East Texas Regional Mobility Authority, for a term to expire February 1, 2022, Gary N. Halbrooks of Bullard, Texas (replacing Linda Ryan Thomas of Longview, who resigned).

Greg Abbott, Governor

TRD-202104284



Appointments

Appointments for October 25, 2021

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2027, Todd W. Boykin of Amarillo, Texas (Mr. Boykin is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2027, Jerry Bob Daniel of Truscott, Texas (Mr. Daniel is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2027, Conrad J. Masterson, Jr. of Cee Vee, Texas (replacing George "Wilson" Scaling, II of Henretta, Texas whose term expired).

Appointed to the Texas Judicial Council, for a term to expire June 30, 2027, Zina G. Bash of Austin, Texas (replacing Kenneth S. "Ken" Saks of San Antonio, Texas whose term expired).

Appointed to the Texas Judicial Council, for a term to expire June 30, 2027, Evan A. Young of Austin, Texas (Mr. Young is being reappointed).

Appointed to the Judicial Compensation Commission, for a term to expire February 1, 2027, Guy A. "Tony" Fidelie, Jr. of Wichita Falls, Texas (replacing Alejandro "Alex" Cestero of Houston whose term expired).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2025, Anthony "Tony" Mbroh of Dallas, Texas (replacing Darren G. Yancy, Sr. of Burleson, Texas who resigned).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, Cynthia A. Flores of Round Rock, Texas (Ms. Flores is being reappointed).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, Christine T. Giese of Brenham, Texas (replacing William J. "Bill" Rankin of Brenham whose term expired).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, Charles R. "Rick" Huber, III, of Granbury, Texas (Captain Huber is being reappointed).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, Helen Jimenez of Richmond,

Texas (replacing Jeffrey S. "Jeff" Tallas of Sugar Land, Texas whose term expired).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, John Henry Luton of Granbury, Texas (Mr. Luton is being reappointed).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, David "Austin" Ruiz, O.D. of Harker Heights, Texas (Dr. Ruiz is being reappointed).

Appointed to the Brazos River Authority of Texas Board of Directors, for a term to expire February 1, 2027, William W. "Ford" Taylor, III of Waco, Texas (Mr. Taylor is being reappointed).

Greg Abbott, Governor

TRD-202104321



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-0436-KP

Requestor:

The Honorable James White
Chair, House Committee on Homeland Security & Public Safety
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether federal judicial precedent requires private citizens to recognize same sex marriages in Texas (RQ-0436-KP)

Briefs requested by November 22

RQ-0437-KP

Requestor:

Mr. Darryl D. Thomas

Dallas County Auditor

509 Main St., Suite 407

Dallas, Texas 75202-3548

Re: Whether county community supervision and corrections departments must remit a portion of locally generated funds to the State at the end of the biennium as unexpended balances (RQ-0437-KP)

Briefs requested by November 29

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

TRD-202104319

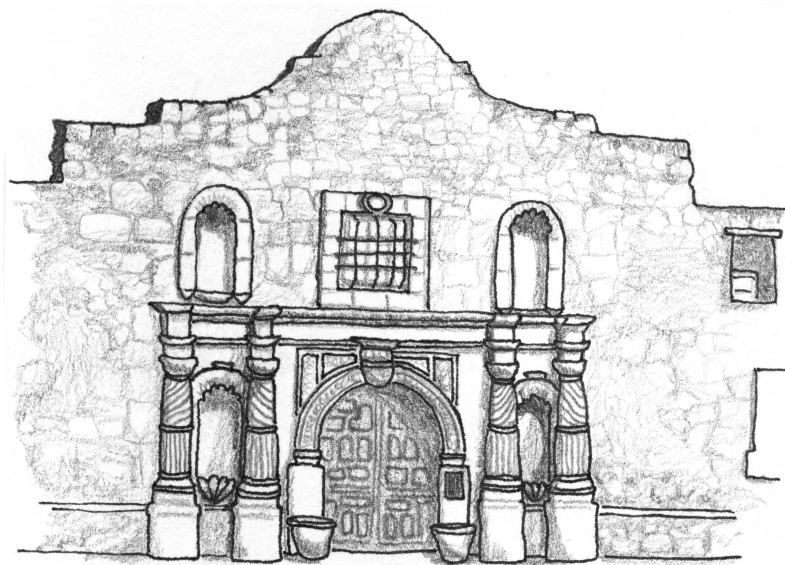
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: October 27, 2021





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.47

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) or Related Conditions, new §551.47, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in ICF/IID. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

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

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Texas Health and Safety Code §§252.031 - 252.033 and 242.043. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §§252.031 - 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey, or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

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

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

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

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

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

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

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

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

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

(7) Fully vaccinated person--A person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

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

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

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

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

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

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

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

(15) Physical distancing--Maintaining a minimum distance between persons as recommended by the CDC, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(16) PPE--Personal protective equipment.

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

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

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

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

(21) Unknown COVID-19 status--The status of a person, except as provided by the CDC for an individual who is fully vaccinated for COVID-19 or recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An intermediate care facility must screen all visitors prior to allowing them to enter the facility in accordance with subsection (c) of this section, except emergency services personnel entering the facil-

ity or facility campus in an emergency. Visitor screenings must be documented in a log kept at the entrance to the facility, which must include the name of each person screened, the date and time of the screening, and the results of the screening. The visitor screening log may contain protected health information and must be protected in accordance with applicable state and federal law.

(c) Visitors must be screened in accordance with emergency rules in §551.46 of this chapter (relating to ICF/IID Provider Response to COVID-19 - Mitigation).

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

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

(f) The facility must offer a complete series of a one- or two-dose COVID-19 vaccine to individuals and staff and document each individual's choice to vaccinate or not vaccinate.

(g) The facility must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required by this subsection. If an intermediate care facility fails to comply with the requirements of this section, HHSC may impose licensure remedies in accordance with Subchapter H of this chapter (relating to Enforcement).

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

(A) A facility may ask about a visitor's COVID-19 vaccination status and COVID-19 test results, but a facility must not require a visitor to provide documentation of a COVID-19 negative test or COVID-19 vaccination status as a condition of visitation or entering the facility.

(B) A facility must develop and enforce policies and procedures that ensure infection control practices, including whether the visitor and the individual must wear a face mask, face covering, or appropriate PPE.

(C) To permit indoor visitation, a large intermediate care facility must have separate areas, units, wings, halls, or buildings designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status individual cohorts.

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

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

(ii) infection control precautions; and

(iii) other applicable facility practices (e.g., specified entries and exits, routes to designated areas, and hand hygiene).

(E) Visitation must be facilitated to allow time for cleaning and sanitization of the visitation area between visits and to ensure infection prevention and control measures are followed. A facility may schedule personal visits in advance to facilitate cleaning and sanitization of the visitation area. A facility may permit personal visits that are not scheduled in advance. Scheduling visits in advance must not be so restrictive as to prohibit or limit visitation for individuals.

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

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

(H) Except as provided in subparagraph (I) of this paragraph, the individual and his or her personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(I) Essential caregiver visitors and end-of-life visitors do not have to maintain physical distancing between themselves and the individual they are visiting but must maintain physical distancing between themselves and all other persons in the facility.

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

(K) A facility must ensure equal access by all individuals to personal visitors, end-of-life visitors, and essential caregivers.

(L) A facility must allow visitors of any age.

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

(N) A facility must inform visitors of the facility's infection control policies and procedures related to visitation.

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

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

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

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

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

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

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

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

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

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

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

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

(F) An intermediate care facility must:

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

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

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

(iv) maintain documentation of the identity of each essential caregiver in the individual's records; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The intermediate care facility must:

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

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

(C) maintain documentation of the salon services visitor's training, as required in paragraph (4)(B) of this subsection;

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

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

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

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

Filed with the Office of the Secretary of State on October 18, 2021.

TRD-202104155

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: October 20, 2021

Expiration date: February 16, 2022

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



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

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

26 TAC §558.950

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

BACKGROUND AND PURPOSE

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

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

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §142.012. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Health and Safety Code §142.012 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 and to adopt rules prescribing minimum standards to protect the health and safety of clients admitted to hospice inpatient units.

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

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

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

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

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

(3) End-of-life visit--A personal visit between a personal visitor and a client receiving hospice services who is at or near the end of life and in the later stages of a terminal illness or whose prognosis does not indicate recovery. An end-of-life visit is permitted in all hospice inpatient units and for all clients of a hospice inpatient unit at the end of life.

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

(5) Essential caregiver visit--A personal visit between a client and an essential caregiver. An essential caregiver visit is permitted in all hospice inpatient units for all clients with any COVID-19 status.

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

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

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

(9) Fully vaccinated person--A person who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(10) Indoor visit--A personal visit between a client and one or more personal visitors that occurs in-person in a dedicated indoor space, which may include the client's room.

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

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

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

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

(15) Physical distancing--Maintaining a minimum distance between persons as recommended by the CDC, avoiding gathering in groups in accordance with state and local orders, and avoiding unnecessary physical contact.

(16) PPE--Personal protective equipment.

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

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

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

(20) Unknown COVID-19 status--The status of a person, except as provided by the CDC for a fully-vaccinated client who has recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the hospice inpatient unit;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

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

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

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

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

(3) any other signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated; or

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

(d) A hospice agency operating a hospice inpatient unit must allow persons providing critical assistance, including essential caregivers and family education visitors and persons with legal authority to enter to enter the unit if they pass the screening in subsection (c) of this section.

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

(f) The hospice inpatient unit must offer a complete series of a one- or two-dose COVID-19 vaccine to clients, client's family, and staff and document each client's choice to vaccinate or not vaccinate.

(g) The hospice agency operating the hospice inpatient unit must allow essential caregiver visits, family education visits, end-of-life visits, indoor visits, and outdoor visits as required by this section. If a hospice inpatient unit fails to comply with the requirements of this subsection, HHSC may take action in accordance with §558.601 of this chapter (relating to Enforcement Actions). In accordance with §558.602 of this chapter (relating to Administrative Penalties), HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation if HHSC

determines that the hospice agency willfully violated a client's right to visitation.

(1) The following limits and requirements apply to all visitation under this section.

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

(B) A hospice agency must develop and enforce policies and procedures that ensure infection control practices, including whether the visitor and the individual must wear a face mask, face covering, or appropriate PPE.

(C) To permit indoor visitation, a hospice agency operating an inpatient hospice unit must have separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status client cohorts.

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

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

(ii) infection control precautions; and

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

(E) Visitation must be facilitated to allow time for cleaning and sanitization of the visitation area between visits and to ensure infection prevention and control measures are followed. A hospice agency may schedule personal visits in advance or permit personal visits that are not scheduled in advance. Scheduling in advance must not be so restrictive as to prohibit or limit visitation for clients and families.

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

(G) Except as provided in subparagraph (H) of this paragraph, a client and his or her personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and all other persons in the facility.

(H) Family education visitors, essential caregiver visitors, and end of life visitors may have close or personal contact with the client they are visiting. The visitor must maintain physical distancing between themselves and all other persons in the facility.

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

(J) A hospice agency must ensure equal access by all clients to personal visitors, family education visitors, end-of life visitors, and essential caregivers.

(K) A hospice agency must allow visitors of any age.

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

(M) A hospice agency must inform visitors of the agency's infection control policies and procedures related to visitation.

(N) A hospice agency must provide hand washing stations, or hand sanitizer, to the visitor and client before and after visits.

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

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

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

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

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

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

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

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

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

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

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

(F) A hospice agency must:

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

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

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

(iv) maintain documentation of the identity of each essential caregiver in the client's records; and

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

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

(h) A hospice agency operating a hospice inpatient unit may allow a salon services visitor to enter the facility to provide services to a client only if:

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

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

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

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

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

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

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

(4) The hospice agency must develop and enforce salon services visitation policies and procedures, which include:

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

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

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

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

(5) The hospice agency must:

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

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

(C) maintain documentation of the salon services visitor's training as required in paragraph (4)(B) of this subsection;

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

(E) prevent visitation by the salon services visitor if the client has an active COVID-19 infection; and

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

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

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

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

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

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

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

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

(7) The family education visitor must:

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

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

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

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

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

(k) If a hospice agency operating a hospice inpatient unit fails to comply with the requirements of this subsection HHSC may take action in accordance with §558.601 of this chapter. In accordance with §558.602 of this chapter, HHSC may assess an administrative penalty of \$500 without providing the hospice agency with an opportunity to correct the violation.

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

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

Filed with the Office of the Secretary of State on October 18, 2021.

TRD-202104156

Karen Ray

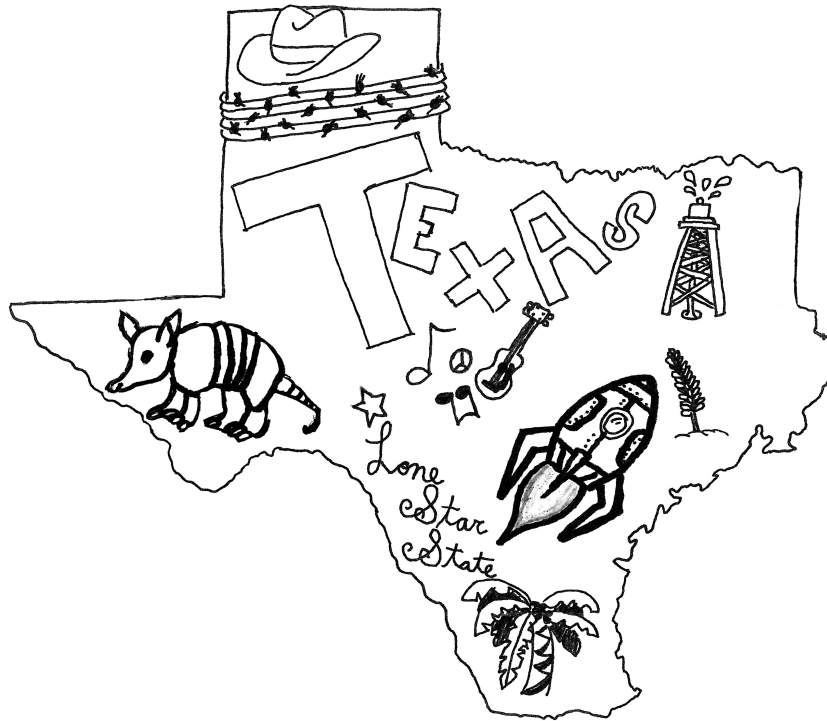
Chief Counsel

Health and Human Services Commission

Effective date: October 20, 2021

Expiration date: February 16, 2022

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



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.143

The Office of the Attorney General (OAG) proposes a new rule, §55.143, to implement the requirements of the Arrears Payment Incentive Program pursuant to Texas Family Code §§231.124 and 231.003.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rule prescribes how the OAG, a Title IV-D agency (Texas Family Code §231.001) will administer a payment incentive program to promote payment by obligors who are delinquent in satisfying child support arrearages assigned to the Title IV-D agency. The OAG proposes new §55.143, which identifies the program requirements, but the current program is not changing with §55.143's implementation.

SECTION SUMMARY

Section 55.143 identifies criteria, conditions, procedures, and financial incentives for the program. The OAG will make the application form available on its website (Texas Attorney General, Child Support Division's Arrears Payment Incentive Program Application (Form 1575)).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the rule. The proposed rule will have a neutral fiscal impact to the state. The payment incentive program implemented pursuant to the requirements of Texas Family Code §231.124 requires the OAG to reduce child support arrearages owed to the state if a participating obligor makes payments toward child support arrearages owed the family.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS

Because state-owned arrearages are often the last portion of a child support obligation collected, if ever, the program has demonstrated to be a proven incentive for obligors to send in more payments, in higher amounts, and in an expedited manner. This program has resulted in increased collections for families with current support obligations and family-owned arrears.

In cases with only state-owned arrearages remaining, which are often uncollectable obligations due to the obligor's lack of resources and limited remedies available to enforce through involuntary collections, the program has proven to be an incentive for many noncompliant obligors to start making voluntary payments to satisfy their remaining obligation.

The OAG has determined that the cost to the state to maintain indefinitely some non-paying cases solely for the purpose of attempting to collect state-owned arrearage balances likely exceeds the amounts that might eventually be collected and retained by the state through various collection remedies. This program creates an incentive for enrolled obligors to make increased voluntary payments to satisfy their arrearage balances more quickly, which then allows the OAG to close their child support cases.

Ms. Thornton has also determined that for each year of the first five years the proposed rule is in effect the public will benefit from the promotion of payments by obligors who are delinquent in satisfying child support arrearages assigned to the OAG. The OAG will also benefit by reducing the costs associated with maintaining non-paying cases indefinitely as fewer cases will need to be maintained when obligors voluntarily make increased payments, eventually paying off all outstanding balances.

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

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

Ms. Thornton has determined that there will not be an effect on small businesses, micro-businesses, or rural communities required to comply with the proposed rule.

LOCAL EMPLOYMENT OR ECONOMY IMPACT

Ms. Thornton has determined that the proposed rules do not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the proposed rule would be in effect, the proposed rule:

- will not create or eliminate a government program (the program was first authorized by the Texas legislature in 2011, and the OAG has successfully operated the program since 2012, first as a limited pilot program, and then as a statewide program beginning in 2018);

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency.
- will create one new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

For 30 days following the publication of this rule, the OAG will accept public comments regarding the review. Comments are due on Monday, December 6, 2021, by 5:00 p.m. CST. Comments should be directed to Rebecca Foster, Deputy Division Chief, Child Support Legal Services, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017, CSD-Tex-Admin-Code@oag.texas.gov .

The proposed rule is authorized under Texas Family Code §231.124(a), which provides the OAG with the authority to promulgate rules to administer a payment incentive program. The proposed rule implements the requirements of Texas Family Code §231.124.

STATUTORY AUTHORITY. OAG proposes new 1 TAC §55.143 under Texas Family Code §§231.003 and 231.124. Section 231.003 authorizes a Title IV-D agency to promulgate procedures by rule for the implementation of Chapter 231. Section 231.124 provides that the OAG may establish and administer a payment incentive program to promote payment by obligors who are delinquent in satisfying child support arrearages.

Cross-reference to Statute. New §55.143 implements an incentive program to promote payment of child support arrearages as permitted by Texas Family Code §231.124.

§55.143. Arrears Payment Incentive Program.

(a) The Arrears Payment Incentive Program is a voluntary program administered by the Title IV-D agency to promote payment by obligors who are delinquent in satisfying child support arrearages assigned to the Title IV-D agency under Texas Family Code §231.104(a). The program is established pursuant to Texas Family Code §231.124. The program provides to a participating obligor a credit satisfying child support arrearages assigned to the Title IV-D agency for every dollar amount paid by the obligor on interest and arrearages balances during each month of the obligor's voluntary enrollment in the program. Participation by an obligor in the program does not prohibit the Title IV-D agency from pursuing any other collection method authorized by law.

(b) The following criteria must be met for an obligor to be eligible to participate in the program:

(1) there must be a final Texas child support order in the obligor's case;

(2) the obligor must have and maintain a current address on record with the Title IV-D agency;

(3) there must be at least \$500 in both state-owned arrears (child support assigned to the state under Texas Family Code §231.104(a) that accrued during any month the obligee received TANF/AFDC public assistance benefits) and unrecovered assistance (the amount of money paid in the form of public assistance under the Title IV-A program that has not yet been recovered from collections applied to state owned arrears for the case);

(4) the child support obligation must not be payable to the Department of Family and Protective Services;

(5) the obligor must not have a pending bankruptcy case;

(6) the obligor's case must not be one in which the Title IV-D agency is providing intergovernmental services under Texas Family Code Chapter 159; and

(7) the obligor must not be currently incarcerated.

(c) The following conditions apply to an obligor's continued participation in the program:

(1) to receive program matching payment credits reducing state-owned arrears, an obligor must pay the current support obligations for the month in full, including medical and dental support, if any, plus make a payment toward the child support arrears balance;

(2) an obligor must make at least one qualifying arrearage payment within any 180-day period for continued participation in the program. Failure by an obligor to make at least one qualifying arrearage payment within any 180-day period may result in the Title IV-D agency removing the obligor from the program;

(3) payments must be voluntarily paid by the obligor or by the obligor's employer through income withholding; and

(4) if an obligor enrolled in the program seeks federal bankruptcy protection, the obligor shall no longer be eligible to receive program matching payment credits and shall be removed from the program while the bankruptcy proceeding is pending.

(d) The following procedures apply to enrollment in the program:

(1) the Office of the Attorney General will make the Texas Attorney General, Child Support Division's Arrears Payment Incentive Program Application (Form 1575) available on its website;

(2) if an obligor has multiple cases and wants each case enrolled in the program, the obligor will need to apply to the program for each case;

(3) obligors may apply for initial enrollment in the program regardless of whether they are currently making payments on their case;

(4) if the obligor is removed from the program, there is a six-month waiting period to be eligible to re-apply; and

(5) an obligor may be immediately eligible for re-enrollment if a lump sum payment equaling at least three full months of support obligations, including any periodic court-ordered arrears payments, is paid through the Texas Child Support State Disbursement Unit.

(e) The following terms apply to the financial incentives to be offered under the program:

(1) if the obligor pays all current support obligations for the month, any additional amounts paid towards the child support arrears will be matched with a dollar for dollar credit that will be applied to reduce state-owned child support arrears. Program matching credits will not be applied to reduce medical support or dental support arrears. Program matching payment credits will not reduce any family-owned arrears;

(2) an obligor is eligible to earn program matching payment credits from the date of acceptance into the program;

(3) program matching payment credits automatically stop once unrecovered assistance is paid in full or state-owned child support arrears are paid in full, whichever occurs first; and

(4) payments received on other cases involving the obligee may impact the portion of arrears on the obligor's case that are eligible for matching payment credits.

(f) The following payments are not eligible for program matching payment credits:

(1) federal offsets;

(2) state debt setoffs;

(3) lottery intercepts;

(4) bond forfeitures;

(5) monies received as the result of child support liens or levies; or

(6) payments made directly to the obligee and not through the Texas Child Support State Disbursement Unit.

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 October 21, 2021.

TRD-202104248

Austin Kinghorn

General Counsel

Office of the Attorney General

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 460-6673



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER N. FOOD AND FIBERS RESEARCH GRANT PROGRAM RULES

4 TAC §§1.920 - 1.928

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter N, regarding Food and Fibers Research Grant Program Rules, §§1.920 - 1.928.

Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Chapter 42, Texas Agriculture Code, which created the Food and Fibers Research Grant Program. As a result of the repeal of Chapter 42, Texas Agriculture Code, rules for the Food and Fibers Research Grant Program are no longer necessary.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeals will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals will be in effect, the Department has determined the following:

1. the proposed repeals do not create or eliminate a government program;
2. implementation of the proposed repeals does not require the creation or elimination of employee positions;
3. implementation of the proposed repeals does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals do not require an increase or decrease in fees paid to the Department;
5. the proposed repeals do not create a new regulation;
6. the proposed repeals will repeal an existing regulation;
7. the proposed repeals do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed repeals do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mindy Weth Fryer, Director for Contracts and Grants, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the proposed repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Fryer has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department. Ms. Fryer has also determined that for each year of the first five-year period the proposed repeals are in effect, there will be no cost to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeals, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed repeals may be submitted to Skyler Shafer, Assistant General Counsel, P.O. Box 12847, Austin, Texas 78711, or by email to skyler.shafer@texasagriculture.gov.

The deadline for comments is 30 days after publication in the *Texas Register*.

The repeals are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code. No other sections are affected by these repeals.

§1.920. *Definitions.*

§1.921. *Purpose.*

§1.922. *Administration.*

§1.923. *Council.*

§1.924. *Council Meetings.*

§1.925. *Primary Research Areas.*

§1.926. *Proposal Submission.*

§1.927. *Proposal Review and Selection.*

§1.928. *Reporting Requirements.*

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

Filed with the Office of the Secretary of State on October 21, 2021.

TRD-202104242

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: December 5, 2021

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



PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.5, 51.10, 51.16

The Texas Animal Health Commission proposes amendments to Title 4, Texas Administrative Code, Chapter 51 titled "Entry Requirements". Specifically, amendments are proposed to §51.5 concerning Movement of Quarantined Animals, and §51.10, concerning Cervidae. The Texas Animal Health Commission proposes the addition of §51.16, concerning Enforcement and Penalties.

The proposed amendments to §51.5 update the reference from §161.061 of the Texas Agriculture Code to §45.3 of the Texas Administrative Code in accordance with Senate Bill 705 enacted by the Texas Legislature during the 87th Regular Session. Senate Bill 705 amended §161.041 and §161.061 of the Texas Agriculture Code, and now requires the commission to adopt rules listing the diseases that require control or eradication. The commission adopted amendments to Chapter 45, titled "Reportable and Actionable Diseases", in a duly noticed meeting on September 21, 2021. The proposed amendments to §51.5 also clarify the Executive Director's approval is required for each consignment of animals moving to slaughter or to a quarantined feedlot for those animals affected with or recently exposed to an

infectious, contagious, or communicable disease or that originate from quarantined herds or flocks. Grammatical and editorial changes are also proposed for consistency and improved readability. In §51.5(b), poultry and birds are proposed for deletion because "animal" encompasses the terms. "Animal" is defined in 4 TAC §51.1 to include livestock, exotic livestock, domestic fowl, and exotic fowl.

In §51.10, concerning Cervidae, amendments are proposed to subsections (a) and (b) to control and reduce the incidence of CWD entering Texas, as well as provide clearer guidelines of entry requirements for CWD susceptible species. CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists. Grammatical and editorial changes are also proposed for improved readability and consistency. Specifically, certain terms and provisions, such as the addition of reindeer and caribou, are proposed to be consistent with Title 4 Texas Administrative Code Chapter 40.

The proposed new section, §51.16 concerning Enforcement and Penalties, describes the scope of violations and respective penalties as prescribed by Chapter 161 of the Texas Agriculture Code. Subsection (b) provides that administrative penalties may not exceed \$5,000 each day a violation continues or occurs.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff of the Texas Animal Health Commission, determined for each year of the first five years the rules are in effect, there will be no additional fiscal implications for state or local government because of enforcing or administering the proposed rules as commission employees currently allocated to these activities will continue to administer and enforce these rules as part of their current job duties and resources.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the rules are in effect, the anticipated public benefit as a result is updating the rule to align with the requirement enacted during the 87th Regular Legislative Session that the Texas Animal Health Commission adopt rules listing the diseases that require control or eradication. As such, the proposed amendments update the reference to the diseases identified in Chapter 45 of the Texas Administrative Code.

The proposed amendments to §51.10(a) and (b) would reduce the risk of CWD entering Texas and clarify entry requirements for CWD susceptible species into Texas, which would improve understanding of entry permit approval or denial. Additionally, terms are amended for consistency with other chapters in Title 4 of the Texas Administrative Code. Further, grammatical and editorial changes are proposed in both sections for improved readability.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

MAJOR ENVIRONMENTAL RULE

The commission determined that Texas Government Code §2001.0225 does not apply to the proposed amendments because the specific intent of these rules is not primarily to protect the environment or reduce risks to human health from environmental exposure and, therefore, is not a major environmental rule.

TAKINGS ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's right to his or her private real property that would otherwise exist in the absence of government action. Instead, the proposed rules in part relate to the handling of animals, including requirements concerning movement, pursuant to 4 TAC §59.7. As such, the activities under the proposed amendments do not constitute a takings and do not require a Takings Assessment pursuant to Texas Government Code §2007.043.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The commission determined that because the proposed rules would not result in any direct economic effect on any small business, microbusiness, or rural community, neither the economic impact statement nor the regulatory flexibility analysis described in Texas Government Code, Chapter 2006, is required.

Although the commission does not predict adverse economic impacts to those directly regulated by the commission in Texas, the commission reviewed 97 permit requests in 2020 from 46 out-of-state consignors. As such, the commission considered alternatives to proposing the 25-mile radius requirement for entry. The commission considered proposing no action, halting all interstate movements, implementing a radius of 15 or 25 miles, and a radius of 25 miles unless otherwise epidemiologically determined by the Executive Director. Based on the recent discoveries of CWD in free-ranging, captive and herds certified in an Approved State CWD Herd Certification Program in Texas and other states, as well as the varying degree of disease response, testing and surveillance conducted by other states, the commission found the 25-mile radius with the flexibility for the Executive Director to epidemiologically evaluate entry requests on a case-by-case basis, necessary to protect the health of Texas' CWD susceptible species and prevent adverse economic impacts associated with Chronic Wasting Disease.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement (GGIS). For each year of the first five years the proposed rules would be in effect, the commission determined the following:

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

3. Implementation of the proposed rules would not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules would not require an increase or decrease in fees paid to the commission;

5. The proposed rules would not create a new regulation;

6. The proposed rules would expand existing rules and would not otherwise limit or repeal an existing regulation;

7. The proposed rules would not increase the number of individuals subject to the regulation; and

8. The proposed rules would not adversely affect this state's economy.

COST TO REGULATED PERSONS

The commission determined that for each year of the first five years in which the proposed rules are in effect, the proposed rules do not impose a direct cost on regulated persons, a state agency, a special district, or a local government within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed rules may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax to (512) 719-0719, or by email to comments@tahc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments to Chapter 51 of the Texas Administrative Code are proposed pursuant to Chapter 161 of the Texas Agriculture Code.

Pursuant to Texas Agriculture Code §161.041, titled "Disease Control", the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. The commission shall adopt and periodically update rules listing the diseases that require control or eradication by the commission.

Pursuant to Texas Agriculture Code §161.046, titled "Rules", the commission is authorized to adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to Texas Agriculture Code §161.054, titled "Regulation of Movement of Animals; Exception", the commission may by rule regulation the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to Texas Agriculture Code §161.0545, titled "Movement of Animal Products", the commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The commission by rule may provide terms and conditions for the issuance, renewal, and revocation of a certification.

Pursuant to Texas Agriculture Code §161.061, titled "Establishment", the commission may establish a quarantine against all

or the portion of a state, territory, or country in which a disease listed in rules adopted under Section 161.041 exists.

Pursuant to Texas Agriculture Code §161.081, titled "Importation of Animals", the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The commission by rule may provide for the issuance and form of health certificates and entry permits.

No other statutes, articles, or codes are affected by this proposal.

§51.5. *Movement of Quarantined Animals.*

(a) Animals under a Texas Animal Health Commission [TAHC] quarantine notice. A person shall not move [They are restricted from moving] an animal [out] from a quarantined [Quarantined] area unless the movement is authorized by a commission representative [TAHC].

(b) Animals entering Texas from quarantined herds, flocks, or areas.

(1) An animal [Animals, poultry, or birds] originating in a state or area under quarantine as a result of action taken during a meeting of the commission shall not be moved into Texas except as specified in the quarantine notice.

(2) An animal [Animals, poultry, or birds] affected with or recently exposed to infectious, contagious, or communicable diseases [disease] and not in an area or state under the commission's quarantine or that originate in quarantined herds or flocks shall not be moved into Texas unless:

(A) the animal is [they are] consigned to slaughter or a quarantined feedlot and [are] accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or regularly employed veterinarians or inspectors of the state of origin or of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services and upon written permission by the Executive Director for each consignment; or

(B) upon written permission by the Executive Director [executive director] of the commission for each consignment.

(c) Executive Director determination. If the Executive Director determines or is informed that a disease or agent of disease transmission listed in §45.3(a) - (c) of this title (relating to the Reportable and Actionable Disease List) [; listed in §161.061 of Texas Agriculture Code,] exists in another state, territory, or country, and deems [believes that] it [is] necessary to protect livestock in this state, the Executive Director [executive director] may establish a quarantine against all or the portion of the state, territory, or country in which the disease exists. Any quarantine [Quarantine] issued by the Executive Director will be acted on by the Commission at the next appropriate meeting.

§51.10. *Cervidae.*

(a) Chronic Wasting Disease (CWD). If either the commission [Commission] or the Texas Parks and Wildlife Department issues a quarantine or a prohibition on CWD susceptible species entering the state, that quarantine or prohibition supersedes these rules for the quarantined species. This includes white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus columbianus*), North American elk or wapiti (*Cervus canadensis [Canadensis]*), red deer (*Cervus elaphus*), Sika deer (*Cervus nippon [Nippon]*), moose (*Alces alces*), reindeer and caribou (*Rangifer tarandus*), and any associated subspecies and hybrids or other cervid species determined to be susceptible to CWD, which means an animal that has had a [diagnosis of] CWD diagnosis confirmed by [means of] an official test conducted by an approved

[a] laboratory [approved by USDA/APHIS] shall obtain an entry permit from the commission [Commission] prior to entering Texas. All mule deer and white-tailed deer are also required to obtain an entry permit from the Texas Parks and Wildlife Department in order to enter the state. All requests for entry must be [made] in writing and accompanied with the information necessary to support import qualifications of the animal(s). The entry request must [This should] be received by the commission [TAHC] at least ten working days prior to the proposed entry date. Application processing may [The processing of the application can] be expedited by assuring that all of the necessary documentation has been provided and that the necessary staff is available for review. The application must be accompanied by the owner's statement stating that to his/her knowledge the animal (or donor animals) to be imported have never come in contact with equipment or resided on a premises [premise] where CWD has been [was ever] diagnosed.

(b) Requirements for entry. The applicant must identify the herd of origin and the herd of destination on both the permit application and the Certificate of Veterinary Inspection [certificate of veterinary inspection]. The cervid(s) to be imported into this state[;] shall be identified to their herd of origin by a minimum of two official [official/approved] unique identifiers to include, but not limited to, a legible tattoo, USDA approved eartag, breed registration, RFID device or other commission-approved [state approved] permanent identification method [methods]. If a microchip is used for identification, the owner shall provide the necessary reader. The shipment shall be accompanied by a Certificate of Veterinary Inspection [certificate of veterinary inspection] completed by an accredited veterinarian. Additionally, the applicant must provide documentation showing [that] the animal(s) originate from a herd that has achieved Certified status [successfully participated] in an [a complete] Approved State CWD Herd Certification Program [herd certification program that is] in compliance with the interstate movement requirements of the May 2019 USDA CWD Herd Certification [July 2012, USDA edition of "Chronic Wasting Disease] Program Standards["] and 9 CFR [the Code of Federal Regulations, Title 9,] Parts 55 and 81[;] for a minimum of five years and is more than 25 miles from a location where CWD has been confirmed or as otherwise epidemiologically determined by the Executive Director.

(c) (No change.)

§51.16. *Enforcement and Penalties.*

(a) A person who violates a rule or order under this chapter is subject to administrative penalties, criminal penalties, sanctions, and civil remedies as authorized by Chapter 161, Texas Agriculture Code.

(b) An administrative penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing 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 October 25, 2021.

TRD-202104293

Myra Sines

Chief of Staff

Texas Animal Health Commission

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 719-0724



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §§114.20 - 114.22, 114.27, 114.29, 114.40, 114.50, 114.75, 114.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §§114.20 - 114.22, 114.27, 114.29, 114.40, 114.50, 114.75, and 114.80, regarding the Orthotists and Prosthetists Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 114 implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The proposed rules implement changes identified by the Department as a result of the four-year rule review process conducted under Texas Government Code §2001.39. The proposed rules are necessary to update rule provisions to reflect current Department procedures, amend outdated rule language, and eliminate unnecessary fees.

The proposed rules were presented to and discussed by the Orthotists and Prosthetists Advisory Board at its meeting on October 21, 2021. The Advisory Board made the following changes to the proposed rules: (1) inserting clarifying language into §114.27(c)(4) regarding the ability of orthotists and prosthetists to supervise a licensed prosthetist/orthotist assistant when performing orthotic or prosthetic care, respectively; (2) clarifying in §114.50(f) that pre-recorded, instructor-directed activities may be offered in-person or using telecommunications or information technology that permits two-way interaction between the instructor and the attendee; and (3) adding additional language in §114.75(f)(3) specifying that the permitted offsite or telehealth practice must be within the licensees' scope of practice and removing a reference to "registrants." The Advisory Board voted to recommend that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §114.20, Applications, by permitting submission of official transcripts and references in a manner prescribed by the Department, eliminating the requirement to submit proof of completion of the jurisprudence examination at every other renewal application, and removing outdated language regarding the disapproval of applications.

The proposed rules amend §114.21, Licenses and Licensing Procedures, by eliminating a reference to the jurisprudence examination and clarifying the language requiring display of a license at the primary location of practice or place of employment.

The proposed rules amend §114.22, Examination for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist, by inserting a reference to initial applicants completing the jurisprudence examination, removing outdated language related to the administration of the examination by the Department, and making clarifying changes to the section to reflect the current practices of the Department and its designee regarding the examination.

The proposed rules amend §114.27, Assistant License, to revert language to the previous requirements of the section before erroneous language was inserted due to a clerical error. The language in the proposed rules is modeled on the text of the section as it existed in the version of the rule adopted to be effective October 1, 2016 (41 TexReg 4467), with minor changes to clarify the scope of supervision for assistants. The current rule text contains errors in subsection (c) due to a mistaken submission by Department staff in the version of the rule effective September 1, 2018 (43 TexReg 5362).

The proposed rules amend §114.29, Accreditation of Facilities, to simplify submission requirements for changing a practitioner-in-charge or safety manager, and to eliminate the reference to submitting a fee for changing either of those positions.

The proposed rules amend §114.40, Renewal, by removing the requirement to submit proof of completing the jurisprudence examination and changing the process for voluntary charity care license holders by eliminating the delay until the next renewal period if they wish to reinstate their license type to active status.

The proposed rules amend §114.50, Continuing Education, by clarifying that live or pre-recorded instructor-directed activities may be offered in-person or using telecommunications or information technology that permits two-way interaction between the instructor and the attendee, classifying interactive computer-generated learning activities as a self-study activity, and making clarifying edits to the section based on these changes.

The proposed rules amend §114.75, Scope and Conditions of Practice, by adding telehealth to the scope of practice in a facility, in addition to the existing offsite practice authorized under the section, limiting the offsite or telehealth practice to the licensees' scope of practice, and removing a reference to "registrants."

The proposed rules amend §114.80, Fees, to eliminate the fee for changing a practitioner-in-charge or safety manager, and to eliminate the fees for renewal of a voluntary charity care license type.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Mr. Couvillon has also determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to revenues of local governments.

Mr. Couvillon, has determined that for each year of the first five years the proposed rules are in effect, there will be a \$2,600 loss of revenue for the state government as a result of the changes in the proposed rules. The proposed rules eliminate the \$50 fee for changing the Practitioner-in-Charge or Safety Manager. TDLR has received an average of 29 requests per year over the past five years to change the name of the on-site practitioner in charge of an accredited facility, and 23 request per year over the past five years to change the name of the safety manager of an accredited facility. Therefore, it is estimated that the state government will lose approximately \$2,600 per year from the elimination of these fees.

The proposed rules also reduce the fee for Retired Voluntary Charity Care Prosthetist or Orthotist license renewal from \$150 to \$0, and the fee for Retired Voluntary Charity Care Pros-

thetist/Orthotist license renewal from \$200 to \$0. Currently, there are no practitioners under the Voluntary Charity Care status. The choice to move from active status to Voluntary Charity Care status is discretionary, so the number of people who may choose to one day change to Voluntary Charity Care status cannot be estimated, and any future loss of revenue from this fee reduction can therefore also not be estimated.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules add clarifying language, eliminate the \$50 fee for changing the Practitioner-in-Charge or Safety Manager, and eliminate the fees for Voluntary Charity Care license renewal. The elimination of the fee to change the Practitioner-in-Charge or Safety Manager of a facility eliminates an excessive fee for the update of that information. The elimination of the renewal fee for the Voluntary Charity Care license allows a license holder who is performing only volunteer work, without compensation, to renew at no cost and continue providing charity care to the community, similar to the lack of renewal costs for volunteer license holders in other programs (there is no initial application fee for Voluntary Charity Care license status).

The proposed rules also eliminate the requirement to take the jurisprudence exam when required for renewal; currently the requirement is applicable at every other renewal. Removing the requirement to complete the jurisprudence examination at every other renewal will remove the need to retake an examination the license holder has already passed and will save license holders the cost of the jurisprudence examination fee assessed by the vendor administering the examination.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules will decrease the fees paid to the agency through the elimination of the \$50 fee for changing the Practitioner-in-Charge or Safety Manager and the elimination of the fees for Voluntary Charity Care license renewal.
5. The proposed rules do not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules limit existing regulations by removing the requirement to complete the jurisprudence examination at every other renewal.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 605, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the proposed rules.

§114.20. *Applications.*

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

(c) Unless otherwise indicated an applicant must submit the following, as applicable to the license type for which the person is applying:

(1) (No change.)

(2) official transcript(s) or certificates in a format prescribed by the department, showing [of] all relevant college courses, degrees, and residencies for [showing] successful completion of the applicable requirements under the Act and this chapter;

(3) - (4) (No change.)

(d) The department will accept as proof of completion of a degree or course work an official transcript in a format prescribed by the department from a regionally accredited college or university. Foreign transcripts must be submitted with an evaluation from a [World Education Services (WES), or another] provider approved by the department, that demonstrates equivalency of the foreign degree or coursework with a U.S. degree or coursework.

(e) Uniquely qualified applicants for a practitioner license shall submit references in a manner prescribed by the department [department reference forms] from a total of two physicians, practitioners, or persons licensed or certified by a state or by a national organization in orthotics or prosthetics who can attest to the applicant's skills and professional standards of extensive prosthetic or orthotic practice.

(f) All applicants for initial licensure [and for every other renewal cycle] must submit proof of successful completion of the jurisprudence examination within the last six months [Texas Jurisprudence Examination required under §114.21.] at the time of application.

(g) (No change.)

[(h) Disapproved applications. The department may disapprove an application if the applicant:]

[(1) has failed or refused to properly complete or submit application form(s) or endorsement(s) or has knowingly presented false or misleading information on the application form or other form or documentation required by the department to verify the applicant's qualifications for a license;]

[(2) has obtained or attempted to obtain a license issued under the Act by bribery or fraud;]

[(3) has made or filed a false report or record made in the person's capacity as a prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant;]

[(4) has failed to file a report or record required by law;]

[(5) has obstructed or induced another to obstruct the filing of a report or record required by law;]

[(6) has engaged in unprofessional conduct including the violation of the prosthetic and orthotic standards of practice as established by the department in §114.90;]

[(7) has developed an incapacity that prevents prosthetic or orthotic practice with reasonable skill, competence, or safety to the public as the result of a physical or mental condition or illness or drug or alcohol dependency;]

[(8) has failed to report a known violation of the Act or this chapter to the department;]

[(9) has violated a provision of the Act, a rule adopted under the Act, or an order issued by the executive director or the commission;]

[(10) has been excluded from participation in Medicare, Medicaid, or other federal or state cost-reimbursement programs due to fraudulent activities;]

[(11) has committed a prohibited act under the Act, §§605.351 - 605.352; or]

[(12) fails to meet department standards for the license for which the applicant is applying developed in accordance with Chapter 53, Occupations Code, relating to criminal history.]

§114.21. Licenses and Licensing Procedures.

(a) (No change.)

[(b) Jurisprudence examination. The Texas Jurisprudence Examination content is based on the Act, the rules of the department, and other state and federal laws and rules that relate to the practice of orthotics and prosthetics.]

(b) [(e)] Term of license.

(1) A license shall be issued for a two-year [two year] period.

(2) A temporary license shall be issued for a one-year [one year] period^[-] and may be renewed for one additional one-year [one year] period.

(3) A student registration shall be issued for a two-year period^[-] and may be renewed for one additional two-year [two year] period.

[(c) [(d)] Licenses issued by the department remain the property of the department and must be surrendered to the department on demand.

[(d) Licensees shall display the license in the primary location of practice or place of employment, but shall not display a license that has been photographically or otherwise reproduced.

[(e) Licenses shall be displayed appropriately and publicly as follows:]

[(1) The license shall be displayed in the primary office or place of employment of the licensee.]

[(2) Lacking a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry the license, or obtain duplicate licenses to display at each location.]

[(3) No person shall display or carry a copy of a license instead of the original document.]

[(c) [(f)] A licensee shall only allow his or her license to be copied for licensure verification by employers, licensing boards, professional organizations and third-party [third party] payers for credentialing and reimbursement purposes. The licensee shall sign, date and clearly mark copies with the word "COPY" across the face of the document.

[(f) [(g)] License alterations. No person shall make alterations to a license or to a copy of a license.

§114.22. Examination for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

(a) (No change.)

[(b) Each applicant for initial licensure shall complete the jurisprudence examination.

(c) [(b)] Examinations shall be offered by the department's designee [in prosthetics or orthotics].

~~[(e) To take the examination, the applicant must have been:]~~

~~[(1) issued a student registration; or]~~

~~[(2) approved by the department.]~~

(d) The department shall notify an applicant whose license application has been approved that the applicant is eligible to take the relevant examination(s).

~~(e) [(d)] Approved applicants shall have no more than two years from the date of approval to pass the required examination(s).~~

~~[(e) Applications for examination.]~~

~~[(1) The department shall notify an applicant whose license application has been approved that the applicant is eligible for the examination.]~~

~~[(2) The department or its designee shall forward an examination registration form to the approved applicants at least thirty (30) days before a scheduled examination. An applicant who wishes to take a scheduled examination must complete the registration form and return it to the department or its designee by the established deadline.]~~

~~[(f) Locations. Examinations administered by the department or its designee will be held at locations to be announced by the department or its designee.]~~

~~(f) [(g) Frequency.] The examinations shall be administered at least once each year.~~

~~[(h) Grading. The department shall establish cut scores and shall grade examinations administered by the department or its designee.]~~

~~[(i) Results.]~~

~~[(1) If the examination is graded or reviewed by a national or state testing service, the department shall notify the examinees of the examination results within fourteen (14) days of the date the department receives the results from the testing service.]~~

~~[(2) If examination results will be delayed for more than ninety (90) days after the examination, the department shall notify the applicants of the reason for the delay before the ninetieth day.]~~

~~[(j) Examination failure. Upon written request, the department shall furnish an applicant who fails an examination an analysis of performance.]~~

§114.27. Assistant License.

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

~~(c) Scope of practice.~~

~~(1) (No change.)~~

(2) A licensed orthotist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed orthotist or licensed prosthetist/orthotist.

~~[(2) The supervisor shall not allow the clinical residency to begin until approval from the department is received.]~~

(3) A licensed prosthetist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed prosthetist or licensed prosthetist/orthotist.

~~[(3) The supervisor shall provide the clinical resident and the department with written documentation upon beginning, terminating or completing a clinical residency.]~~

(4) A licensed prosthetist/orthotist assistant may provide ancillary patient care services, including assistant patient care services, under the supervision of a licensed prosthetist/orthotist, or a licensed orthotist for orthotic care, or a licensed prosthetist for prosthetic care.

~~[(4) The resident shall practice under the direct supervision of a licensed practitioner. The supervisor must be licensed in the same discipline as the course of study being completed by the clinical resident.]~~

(5) The supervising practitioner is responsible for the acts or omissions of the licensed assistant.

~~[(5) The supervising practitioner must review and sign off on patient care notes made by the clinical resident.]~~

(6) A licensed assistant may only assist in the performance of critical care events while in the physical presence of the supervising practitioner.

~~[(6) The clinical residency shall primarily provide learning opportunities for the clinical resident rather than primarily providing service to the prosthetic or orthotic facility or its patients or clients.]~~

(7) Except as set forth in this subsection, the supervising practitioner shall supervise and direct the licensed assistant.

~~[(7) The clinical residency shall include both observation and supervised performance of assistant level work including assisting with patient assessments, measurement, design, fabrication, assembling, fitting, adjusting or servicing prostheses or orthoses or both, as appropriate to the type of residency. Supervision shall be in the physical presence of the supervisor.]~~

(8) The supervising practitioner shall report to the department violations of the Act or this chapter committed by the licensed assistant.

~~[(8) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with the duties of the licensed practitioner.]~~

~~(9) (No change.)~~

§114.29. Accreditation of Facilities.

~~(a) - (c) (No change.)~~

~~(d) Personnel requirements for accredited facilities. Accredited facilities shall have the following staff and shall comply with the following conditions:~~

~~(1) Practitioner in charge.~~

~~(A) - (B) (No change.)~~

~~(C) To change the designation of the on-site practitioner(s) in charge, the facility shall provide notice in the manner prescribed by the department [notify the department in writing of the name and license number] of the new on-site practitioner(s) and the effective date of the change within thirty (30) days after the change is effective. [The written notice shall be accompanied by the appropriate fee.]~~

~~(2) (No change.)~~

~~(3) Safety manager. An accredited facility must designate at least one person as the safety manager.~~

~~(A) (No change.)~~

~~(B) To change the designation of the safety manager(s), the facility shall provide notice in the manner prescribed by the department [notify the department in writing] of the new [name and license number of the] safety manager(s), [if any,] and the effective date of the~~

change within thirty (30) days after the change is effective. [The written notice shall be accompanied by the appropriate fee.]

(e) - (m) (No change.)

§114.40. *Renewal.*

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

(c) License renewal requirements. To renew a license, a licensee must:

(1) (No change.)

~~[(2) submit proof of successfully completing the Texas Jurisprudence Exam, if applicable;]~~

(2) ~~[(3)]~~ successfully pass a criminal history background check;

(3) ~~[(4)]~~ complete applicable continuing education requirements under §114.50;

(4) ~~[(5)]~~ comply with the continuing education audit process described under §114.50, as applicable;

(5) ~~[(6)]~~ submit the renewal fee required under §114.80; and

(6) ~~[(7)]~~ for each license renewal on or after September 1, 2020, the licensee must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(d) Renewal for a retired practitioner performing voluntary charity care.

(1) - (2) (No change.)

(3) A retired practitioner may ~~[not]~~ change his or her retired status by providing notice in the manner prescribed by the department ~~[until the next renewal period]~~. To change status ~~[upon renewal,]~~ the retiree must ~~[notify the department in writing,]~~ submit a renewal application on the department-approved form, the appropriate renewal fee for a prosthetist or orthotist license, and documentation of the required continuing education hours.

(e) - (f) (No change.)

§114.50. *Continuing Education.*

(a) - (e) (No change.)

(f) At least 50% of the total hours of continuing education required must be live, instructor-directed activities. Fifty percent or less may be self-directed study. For purposes of this section, live or pre-recorded instructor-directed activities may be offered in-person or using telecommunications or information technology that permits two-way interaction between the instructor and the attendee.

(g) - (h) (No change.)

(i) Continuing education undertaken by a licensee shall be acceptable if the licensee attends and participates in an activity in the following categories:

(1) - (2) (No change.)

(3) in-service educational programs, training programs, institutes, seminars, workshops, and conferences; ~~[ø]~~

(4) self-study modules, with or without audio and video components, and interactive computer-generated learning activities, if a post-test is required and the number of hours completed do not exceed 50% of the credits required;

(5) distance learning activities and ~~[.]~~ audiovisual teleconferences, ~~[and interactive computer generated learning activities]~~ provided a documented post-test is completed and passed;

(6) instructing or presenting in activities listed in paragraphs (1) - (3). Multiple presentations of the same program or equivalent programs may only be counted once during a continuing education period; and

(7) writing a book or article applicable to the practice of prosthetics or orthotics. Four (4) credits for an article and eight (8) credits for a book will be granted for a publication in the continuing education period in which the book or article was published. Multiple publications of the same article or an equivalent article may only be counted once during a continuing education period. Publications may account for 25% or less of the required credit.

(j) - (q) (No change.)

§114.75. *Scope and Conditions of Practice.*

(a) - (e) (No change.)

(f) Requirement for practice setting of licensees.

(1) - (2) (No change.)

(3) The scope of practice in a facility accredited in accordance with the Act includes offsite and telehealth practice by individual licensees within the licensees' scope of practice ~~[and registrants]~~ as appropriate and commensurate with the medical or physical limitations or disabilities of the patient.

§114.80. *Fees.*

(a) (No change.)

(b) Schedule of fees.

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

(12) changing the name of the on-site practitioner in charge of an accredited facility--~~\$0~~ ~~[\$50]~~;

(13) changing the name of the safety manager of an accredited facility--~~\$0~~ ~~[\$50]~~;

(14) (No change.)

(15) retired voluntary charity care prosthetist or orthotist license renewal--~~\$0~~ ~~[\$150]~~;

(16) retired voluntary charity care prosthetist/orthotist license renewal--~~\$0~~ ~~[\$200]~~;

(17) - (19) (No change.)

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104289

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 5, 2021

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



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.413 (Military Service Members, Military Veterans, and Military Spouses), §402.452 (Net Proceeds), and §402.702 (Disqualifying Convictions). The purpose of the proposed amendments is to conform the rules to various statutes.

The proposed amendments to §402.413(a)(2) will add the space force to the definition of "Armed forces of the United States" in accordance with Texas Occupations Code §55.001(2), which was amended by House Bill 139 of the 87th Texas Legislature.

The proposed amendments to §402.452(b)(3) will base the calculation of net proceeds for a two-year license on each 12-month period that ends on an anniversary of the date the license was issued, in accordance with Texas Occupations Code §2001.451(g)(2).

The proposed amendments to §402.702(i) will allow license and registration applicants 30 days to provide documentation of mitigating factors upon notification of the Commission's intent to deny the application, in accordance with Texas Occupations Code §53.0231(a)(2).

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

LaDonna Castañuela, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amended rules will be in effect, the anticipated public benefit will be to eliminate inconsistencies between the Commission's rules and other state laws.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at Legal.Input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.413, §402.452

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code Chapter 2001.

§402.413. Military Service Members, Military Veterans, and Military Spouses.

(a) The following terms used in this section are defined in §55.001 of the Occupations Code as follows:

(1) (No change.)

(2) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) - (5) (No change.)

(b) - (f) (No change.)

§402.452. Net Proceeds.

(a) (No change.)

(b) Calculation of Net Proceeds for a License Period.

(1) - (2) (No change.)

(3) Net proceeds for a two-year license will be calculated for each year of the license. The calculation of net proceeds for the first year of the license will be based on the quarterly reports for the four (4) calendar quarters immediately preceding the one year anniversary of the license beginning date. The calculation of net proceeds for the second year of the license will be based on the quarterly reports for the four (4) calendar quarters immediately preceding the two-year anniversary of the license beginning date [license end date].

(4) (No change.)

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104286
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 5, 2021
For further information, please call: (512) 344-5392



SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.702

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code Chapter 2001.

§402.702. *Disqualifying Convictions.*

(a) - (h) (No change.)

(i) Upon notification of the Commission's intent to deny a new or renewal application or registry listing, an applicant may provide documentation of mitigating factors that the applicant would like the Commission to consider regarding its application. Such documentation must be provided to the Commission no later than 30 [29] days after the Commission provides notice to an applicant of a denial, unless the deadline is extended in writing or through e-mail by authorized Commission staff.

(j) - (l) (No change.)

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104287
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 5, 2021
For further information, please call: (512) 344-5392



CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.701

The Texas Lottery Commission (Commission) proposes new 16 TAC §403.701 (Family Leave Pool). The 87th Texas Legislature enacted House Bill (H.B.) 2063, which amended Government Code Chapter 661 by adding new Subchapter A-1 to require each state agency to create and administer an employee family leave pool. According to this new statute, the governing body of each state agency is required to adopt rules and implement procedures relating to the operation of the Commission's family leave pool.

The proposed new rule would set forth the purpose of the family leave pool, designate a pool administrator and require the devel-

opment and implementation of operating procedures consistent with the H.B. 2063.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Jan Thomas, Human Resources Director, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be aligning the Commission's rules with the directive of the Texas Legislature to provide eligible employees greater flexibility in caring for children during a child's first year following birth, adoption, or foster placement, and for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed new rule will be in effect, Kathy Pyka, Controller, has determined the following:

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

The Commission requests comments on the proposed new rule from any interested person. Comments may be submitted to Deanne Rienstra, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

The new rule is proposed under the authority of Texas Government Code §661.022, which requires the Commission to adopt rules to create and administer an employee family leave pool.

This proposal is intended to implement Texas Government Code Chapter 661.

§403.701. Family Leave Pool.

A family leave pool is established to provide eligible employees more flexibility in bonding and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

(1) The Executive Director of the Commission is designated as the pool administrator and may delegate duties to the Human Resources Director as needed.

(2) The Human Resources Director, with the advice and consent of the Executive Director, will establish operating procedures consistent with the requirements of this section and relevant law governing operation of the pool.

(3) Donations to the pool are strictly voluntary.

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 October 22, 2021.

TRD-202104274

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 344-5324



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.278

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter Q, §4.278, concerning Functions of Regional Councils. Specifically, this amendment will align Texas Administrative Code rule with statutory changes regarding the role of higher education regional councils in relation to the approval of off-campus workforce education or lower-division programs offered by a public institution of higher education at the request of an employer.

The proposed amendments to the Texas Administrative Code implement newly adopted Texas Education Code Section 51.981, Subchapter Z, by House Bill 4361 (87R). Texas Edu-

cation Code Section 61.0512(g) authorizes the Coordinating Board to approve courses for credit and distance education programs, including off-campus and self-supporting programs.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment of Texas Administrative Code rule with statutory changes regarding the role of higher education regional councils in relation to the approval of off-campus workforce education or lower-division programs offered by a public institution of higher education at the request of an employer. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0512(g), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Texas Education Code, Section 51.981, which authorizes an institution of higher education to offer certain workforce education and lower-division programs requested by employers without approval of a higher education regional council.

The proposed amendment affects Texas Education Code, Chapter 51, Subchapter N.

§4.278. Functions of Regional Councils.

(a) Regional Councils shall advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

(b) With the exception of subsection (e), (i), and (j) of this section, Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(c) With the exception of subsection (e), (i), and (j) of this section, for any dispute arising from off-campus delivery of lower-division courses to groups, any institution party to the disagreement may appeal first to the Regional Council, and then to the Commissioner and then the Board.

(d) Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas and courses and programs governed by the provisions of subsection (e), (i), and (j) of this section.

(e) A public community college may enter into an agreement to offer dual credit courses with a high school located in the service area of another public community college without additional regional council approval.

(f) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(g) With the exception of subsection (h) and (i) of this section, universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(h) Universities, health-related institutions, public community and technical colleges, and Lamar state colleges may offer clinical courses at clinical facilities without Regional Council approval if each of the following criteria is met:

(1) the student(s) enrolled in the clinical course is already employed by the clinical facility;

(2) the institution receives written verification from the clinical facility that there will be no reduction in the number of clinical opportunities available for use by area institutions; and

(3) the institution of higher education shall notify the appropriate Regional Council(s) of the clinical course and provide the Regional Council(s) with written verification from the clinical facility that the course will not reduce the number of clinical opportunities available for use by area institutions.

(i) An institution of higher education may offer a credit or non-credit workforce education course or lower-division program without the approval of a higher education regional council in accordance with Education Code §51.981.

(j) [(h)] Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school without additional regional council approval.

(k) [(j)] All institutions of higher education shall provide notice to the Higher Education Regional Councils when planning to offer requested off-campus and/or electronic to groups dual credit courses in the Council's service area.

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 October 25, 2021.

TRD-202104291

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 427-6206

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §13.303

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter M, §13.303, concerning Standards and Accounting Methods for Determining Total Research Expenditures. Specifically, this amendment makes conforming changes to clarify the accounting standard and reporting requirements that the Coordinating Board uses to determine total eligible research expenditures. The amendment will clarify that a research expenditure does not include funds that an institution passes-through to another public academic or health related entity.

Texas Education Code (TEC), §61.0662, requires the Coordinating Board to maintain an inventory of all institutional and programmatic research activities being conducted by all institutions of higher education, §62.051, establishes the Texas Research University Fund, and §62.053, authorizes the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended.

The proposed amendment in §13.303(c)(1), would clarify that the narrow definition of research expenditures used in the Coordinating Board's Research Expenditure Survey does not include pass-through funds that are passed from an institution to a sub-recipient, if the sub-recipient is another academic or health related entity in order to avoid double-counting of expenditures that are used for the calculation of state research fund distribution. The pass through of funds from one institution of higher education to another is not itself an expenditure of funds pursuant to Education Code §62.053 or 19 Texas Administrative Code §13.302.

Dr. Stacey Silverman, Assistant Commissioner of Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the more uniform application of how research expenditures are accounted at institutions of higher education. The amendment makes non-substantive conforming changes to clarify how the Coordinating Board currently implements the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner of Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Sections 62.051 - 62.0535, which provides the Coordinating Board with the authority to prescribe standards and accounting methods for determining the amount of total research funds expended.

The proposed amendment affects Texas institutions of higher education.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

- (a) Each institution reports R&D expenditures annually in the Research Expenditure Survey.
- (b) R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.
- (c) Research expenses from the AFR are reconciled to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey. Pass-throughs to other public academic or health related entities do not meet the narrow definition of R&D expenditures.

(2) Increase of the AFR total by the amount of indirect costs associated with expenses for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenses or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including indirect costs.

(5) Increase of the AFR total by the amount of pass-throughs from Texas Engineering Experiment Station, as defined for the Research Expenditure Survey.

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 October 25, 2021.

TRD-202104292

Nichole Bunker-Henderson

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Texas Higher Education Coordinating Board

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 427-6206



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §97.7

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §97.7, concerning COVID-19 school exclusion criteria.

BACKGROUND AND PURPOSE

The purpose of the proposal describes the criteria for COVID-19 that require exclusion from schools and provides guidance on readmission criteria. To protect children returning to school and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC, on behalf of DSHS, adopted an emergency rule amendment to §97.7 published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4922). To make this change permanent, DSHS and HHSC propose an amendment to §97.7.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.7 adds COVID-19 to the list of diseases requiring exclusion from school and provides readmission criteria. This change is consistent with the emergency rulemaking amendment to §97.7 that has been adopted.

FISCAL NOTE

Donna Sheppard, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in ef-

fect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Ms. Imelda Garcia, MPH, Associate Commissioner, Laboratory and Infectious Disease Services Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be increased protection against the spread of COVID-19 among children returning to school.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

DSHS 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 Infectious Disease Prevention Section, P.O. Box 149347, Mail Code 1960, Austin, Texas 78714, street address 1100 West 49th Street, Suite T209, Austin, Texas 78714; or emailed to Feedback.IDCU@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 21R163--EAIDU Feedback" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Texas Health and Safety Code §81.042 authorizes the Executive Commissioner to adopt rules governing school exclusion criteria regarding communicable disease. Texas Health and Safety Code §81.004 authorizes the Executive Commissioner to adopt rules governing the effective implementation of Chapter 81, Communicable Diseases.

The amendment implements Texas Government Code §531.0055, and Texas Health and Safety Code §81.004 and §81.042.

§97.7. Diseases Requiring Exclusion from Schools.

(a) The school administrator shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

- (1) amebiasis--exclude until treatment is initiated;
- (2) campylobacteriosis--exclude until after diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications;
- (3) chickenpox--exclude until the lesions become dry or if lesions are not vesicular, until 24 hours have passed with no new lesions occurring;
- (4) common cold--exclude until fever free for 24 hours without the use of fever suppressing medications;
- (5) conjunctivitis, bacterial and/or viral--exclude until permission and/or permit is issued by a physician or local health authority or until symptom free;
- (6) coronavirus disease 2019--exclude and readmit based upon guidance from the Department of State Health Services on its website at <https://dshs.texas.gov/covid19readmission>;

(7) [(6)] fever--exclude until fever free for 24 hours without use of fever suppressing medications;

(8) [(7)] fifth disease (erythema infectiosum)--exclude until fever free for 24 hours without the use of fever suppressing medications;

(9) [(8)] gastroenteritis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications;

(10) [(9)] giardiasis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications;

(11) [(10)] hepatitis A--exclude until one week after onset of illness;

(12) [(11)] infections (wounds, skin, and soft tissue)--exclude until drainage from wounds or skin and soft tissue infections is contained and maintained in a clean dry bandage; restrict from situations that could result in the infected area becoming exposed, wet, soiled, or otherwise compromised;

(13) [(12)] infectious mononucleosis--exclude until physician decides or fever free for 24 hours without the use of fever suppressing medications;

(14) [(13)] influenza--exclude until fever free for 24 hours without the use of fever suppressing medications;

(15) [(14)] measles (rubeola)--exclude until four days after rash onset or in the case of an outbreak, exclude unimmunized child for at least 21 days after the last date the unimmunized child was exposed;

(16) [(15)] meningitis, bacterial--exclude until 24 hours after start of effective treatment and approval by health care provider;

(17) [(16)] meningitis, viral--exclude until fever free for 24 hours without the use of fever suppressing medications;

(18) [(17)] meningococcal infections (invasive disease)--exclude until 24 hours after start of effective treatment and approval by health care provider;

(19) [(18)] mumps--exclude until five days after the onset of swelling;

(20) [(19)] pertussis (whooping cough)--exclude until completion of five days of appropriate antibiotic therapy, or until 21 days have passed since cough onset, whichever is earlier;

(21) [(20)] ringworm--none, if infected area can be completely covered by clothing or a bandage, otherwise exclude until treatment has begun;

(22) [(21)] rubella (German measles)--exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded until at least three weeks after the onset of the last rash;

(23) [(22)] salmonellosis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications;

(24) [(23)] scabies--exclude until treatment has begun;

(25) [(24)] shigellosis--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications;

(26) [(25)] streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever free for 24 hours without the use of fever suppressing medications;

(27) [(26)] tuberculosis disease (suspected or confirmed), pulmonary or laryngeal--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained; and

(28) [(27)] typhoid fever--exclude until diarrhea free for 24 hours without the use of diarrhea suppressing medications and fever free for 24 hours without the use of fever suppressing medications; and 3 consecutive stool specimens have tested negative for *Salmonella* Typhi.

(b) The school administrator shall exclude from attendance any child having or suspected of having a communicable disease designated by the Commissioner of the Department of State Health Services (commissioner) as cause for exclusion until one of the criteria listed in subsection (c) of this section is fulfilled.

(c) Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by:

(1) submitting a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a school setting;

(2) submitting a permit for readmission issued by a local health authority; or

(3) meeting readmission criteria as established by the commissioner.

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 October 22, 2021.

TRD-202104250

Scott A. Merchant

Interim General Counsel

Department of State Health Services

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 776-7676



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

The Texas Department of Insurance (TDI) proposes to amend 28 TAC Chapter 3, concerning life, accident, and health insurance and annuities. This rule proposal updates numerous sections throughout Chapter 3 to reflect Insurance Code §1105.0015 and §425.073, relating to the valuation manual. Insurance Code §1105.0015 specifies that the operative date of the valuation manual is the date on which the valuation manual adopted under Insurance Code Subchapter B, Chapter 425, becomes operative. Insurance Code §425.073 requires that TDI adopt a valuation manual, and specify the operative date of the manual. TDI has adopted the valuation manual and specified its operative date of January 1, 2017, in 28 Texas Administrative Code

§3.9901. This proposal makes conforming changes throughout Chapter 3 to reflect the valuation manual and its operative date.

In addition, the proposal makes nonsubstantive amendments to numerous sections throughout subchapters in Chapter 3 to reflect the recodification of the Insurance Code; to update state agency names, websites, and physical addresses; and to correct typographical, punctuational, and grammatical errors.

TDI proposes to amend the following sections in 28 TAC Chapter 3: Subchapter A, §§3.2 - 3.4, 3.6, and 3.7; Subchapter B, §§3.104, 3.105, 3.107, 3.108, 3.114, 3.115, 3.124, and 3.127; Subchapter C, §§3.203 - 3.205; Subchapter D, §§3.301, 3.302, 3.308, 3.310, and 3.311; Subchapter E, §3.408; Subchapter G, §3.601; Subchapter H, §3.702 and §3.704; Subchapter I, §§3.802 - 3.806 and 3.811; Subchapter J, §3.909; Subchapter K, §§3.1001, 3.1002, and 3.1006; Subchapter L, §3.1101; Subchapter N, §§3.1303 - 3.1305; Subchapter O, §3.1403 and §3.1404; Subchapter Q, §§3.1601, 3.1602, 3.1605 - 3.1607; Subchapter R, Division 2, §3.1720; Subchapter R, Division 3, §3.1740 and §3.1742; Subchapter R, Division 4, §3.1760; Subchapter S, §§3.3001, 3.3009, 3.3010, 3.3038, 3.3039, 3.3052, 3.3057, 3.3070, 3.3092, 3.3100, 3.3101, and 3.3110; Subchapter T, §3.3321; Subchapter U, §§3.3401 - 3.3403; Subchapter Y, Division 2, §§3.3829, 3.3832, 3.3837, 3.3842, and 3.3849; Division 4, §§3.3871, 3.3873, and 3.3874; Subchapter Z, §§3.4001, 3.4002, 3.4004, and 3.4005; Subchapter AA, §§3.4101 - 3.4103 and 3.4105; Subchapter CC, §3.4317; Subchapter EE, §3.4503 and §3.4506; Subchapter FF, Division 1, §3.5002; Subchapter FF, Division 2, §3.5103; Subchapter FF, Division 4, §3.5302; Subchapter FF, Division 6, §3.5602 and §3.5610; Subchapter JJ, §§3.9101, 3.9103, 3.9104, and 3.9106; Subchapter KK, §§3.9202, 3.9203, 3.9206, 3.9211, and 3.9212; Subchapter MM, §3.9401 and §3.9403; and Subchapter NN, §3.9503.

EXPLANATION. The proposed amendments update numerous sections throughout Chapter 3 to reflect Insurance Code §1105.0015 and §425.073, relating to TDI's adoption of a valuation manual, and the operative date for that manual. The proposed amendments also correct and update obsolete and incorrect text throughout Chapter 3. Amendments include updates to (1) statutory references to reflect Insurance Code recodification; (2) use the current names of state agencies; (3) specify current mailing and website addresses; and (4) correct punctuational, grammatical, and typographical errors and revise punctuation and capitalization as appropriate for agency style.

Amendments to multiple sections include the deletion of "shall" or replacement of "shall" with "will" (or another context-appropriate word). The purpose of changing the word "shall" is to provide plain language clarification of the rule text, consistent with current agency style and guidance on the TDI website, which provides links to resources on writing in plain language. Resources TDI uses for plain language guidance include plainlanguage.gov, which provides federal plain language guidelines, and the National Archives guidelines for clear legal documents. Both sources advise using alternatives to the word "shall" to provide clarity for readers.

The proposal also replaces "subchapter" or "chapter" with "title" where necessary, and removal of "the" in front of and commas following "Insurance Code" where appropriate. The proposal also replaces gender references to the commissioner with the phrase "the commissioner." These amendments, along with the amendments to correct punctuational, grammatical, and typographical errors and revise punctuation and capitalization for agency style, are made throughout the proposal and are not oth-

erwise noted in the descriptions of amendments that follow, unless it is necessary or appropriate to provide additional context or explanation for a proposed amendment.

Descriptions of the proposed amendments in Subchapter A follow.

Section 3.2. Definitions. The proposal replaces a citation to Chapter 27 with Chapter 1502 and removes the hyphen from the word "non-forfeiture" to align with statutory language.

Section 3.3. Transmittal Information. The proposal updates the name and mailing address for the program area that can provide the checklist and form addressed by §3.3.

Section 3.4. General Submission Requirements. The proposal replaces a citation to Article 3.53 with Chapter 1153, replaces a citation to Article 3.50 §1(1) with §1131.051, replaces a citation to Article 3.50 §1(5) with §1131.053 in two instances, replaces a citation to Article 3.74 §4 with §1652.101, replaces a citation to Article 3.70-12 with Chapter 1651, replaces a citation to Article 3.42 with Chapter 1701, replaces a citation to Article 3.44a with Chapter 1105, replaces a citation to Article 3.44b with Chapter 1107, replaces a citation to Article 3.70-12 with §1651.053(c), replaces a citation to Article 3.50 §1(6) with §1131.064, replaces a citation to Article 3.51-6 §1(a)(6) with §1251.056, and replaces a citation to Article 3.51-6 §1(a)(2)(3) with §1251.053. In subsection (a), the proposal replaces "Filings Intake Division" with "Life and Health Division," to reflect the department's current organization. In subsection (b)(2), the proposal replaces a requirement to provide a fax number, if available, with a requirement to provide an email address, if available, within the list of information an insurer contact person is to provide to the Department upon form transmittal. The proposal replaces the word "Re-filings" with the word "Refilings" in the catchline to subsection (h). The proposal also removes the hyphen from the word "non-forfeiture" in nine instances to align with statutory language, and it inserts the phrase "of this paragraph" in subsection (r)(2) to clarify an internal reference.

Section 3.6. Certifications, Attachments, and Additional Information Requirements. The proposal replaces a citation to Article 3.50 §1(1) with §1131.051, replaces a citation to Article 3.50 §1(5) with §1131.053, replaces a citation to Article 3.50 §1 with Chapter 1131, replaces a citation to Articles 3.51-6 §1(a) and (2)(a) with Chapter 1251, replaces a reference to Article 3.50 §1(10) with §1131.060, and replaces a reference to Article 3.51-6 §1(a)(2) with §1251.052. The proposal also updates a reference to the heading of 28 TAC Chapter 26.

Section 3.7. Form Acceptance and Procedures. The proposal replaces a citation to Article 3.50, §1, with Chapter 1131; replaces a citation to Articles 3.51-6, §1(a) and §2(a), with Chapter 1251; and replaces references to Articles 3.42(i), (j), and (k) with §§1701.055(a), 1701.055(d), and 1701.057(a).

Descriptions of the proposed amendments in Subchapter B follow.

Section 3.104. Incontestable Clause. The proposal replaces a citation to Article 3.44(3) with §1101.006.

Section 3.105. Statements of the Insured. The proposal replaces a citation to Article 21.16 with §705.004.

Section 3.107. Policy Loans. The proposal replaces a citation to Article 3.44c with Chapter 1110 in two instances.

Section 3.108. Automatic Nonforfeiture Benefits. The proposal replaces a citation to Article 3.44a with Chapter 1105.

Section 3.114. Dependent Child Riders and Family Term Riders. The proposal replaces a citation to Article 3.44a, §3, with §1105.006 in one instance and §1105.007 in another.

Section 3.115. Requirements for a Package Consisting of a Deferred Life Policy with an Accidental Death Rider Attached. The proposal replaces a citation to Article 3.42 with Chapter 1701.

Section 3.124. Provisions Relating to Dividends, Coupon Benefits, or Other Guaranteed Returns. The proposal replaces a citation to Article 3.11 with §841.253.

Section 3.127. Certain Prohibited Provisions. The proposal replaces "Board of Insurance Commissioners" with "Texas Department of Insurance" and replaces "State Board of Insurance" with "TDI."

Descriptions of the proposed amendments in Subchapter C follow.

Section 3.203. Instructions to Commissioner. The proposal replaces a reference to Article 3.42 with Chapter 1701, and it replaces "the board" with "the department."

Section 3.204. Material and Information for the Commissioner to Consider. The proposal replaces a reference to Article 21.21 with Chapter 541 and replaces a reference to Article 3.42 with Chapter 1701.

Section 3.205. Construction of Rules. The proposal replaces a reference to Article 21.21, §4, (6), with §541.056(c), and replaces a reference to "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter D follow.

Section 3.301. Purpose and Scope. The proposal replaces a reference to Chapter 21 with Chapter 541, and it clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.302. Policy Form Submission. The proposal replaces "State Board of Insurance" with "Texas Department of Insurance" and replaces "these sections" with "this subchapter."

Section 3.308. Minimum Nonforfeiture Values. The proposal replaces a reference to Article 3.44a with Chapter 1105, and it replaces the phrase "in the policy" with "by the policy" to align with language in Chapter 1105.

Section 3.310. Artificial Maximum Premiums Prohibited. The proposal replaces a reference to Article 3.44a with Chapter 1105; replaces a reference to Article 3.28 with Chapter 425, Subchapter B; and replaces "State Board of Insurance" with "Texas Department of Insurance."

Section 3.311. General Enforcement. The proposal replaces a reference to Article 21.21 with Chapter 541, and it clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter E follow.

Section 3.408. Mandatory Policy Provisions. The proposal replaces a reference to Chapter 20 with Chapter 842, replaces three references to the "Texas Department of Human Services" with the "Texas Health and Human Services Commission," and replaces two references to "State Board of Insurance" with "Texas Department of Insurance."

Descriptions of the proposed amendments in Subchapter G follow.

Section 3.601. Purpose and Scope, Applicability, and Definitions Used in This Subchapter. The proposal replaces two references to Article 26.43 with §1501.260, replaces a reference to Chapter 20 with Chapter 842, replaces a reference to Chapter 20A with 843, and replaces a reference to Chapter 22 with Chapter 884. It also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter H follow.

Section 3.702. Definitions. The proposal replaces three references to Article 3.75 with Chapter 1152, deletes the defined terms "may" and "shall," renumbers defined terms as appropriate to reflect deletion of the defined terms, and clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.704. Separate Accounts. The proposal replaces a reference to Article 3.75 with Chapter 1152, and it clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter I follow.

Section 3.802. Definitions. The proposal replaces three references to Article 3.75 with Chapter 1152, removes "may" and "shall" as defined terms, renumbers definitions as appropriate to reflect deletion of the defined terms, and clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.803. Qualifications of Insurer to Issue Variable Life Insurance. The proposal replaces a reference to Article 3.75 with Chapter 1152 and "State Board of Insurance" with "Texas Department of Insurance," and it clarifies applicability by replacing the phrase "these sections" with "this subchapter." The proposal replaces a reference to "this rule" with "this section."

Section 3.804. Insurance Contract and Filing Requirements. The proposal replaces six references to Article 3.44a with Chapter 1105, replaces "State Board of Insurance" with "Texas Department of Insurance," replaces a reference to Article 3.44c with Chapter 1110, and clarifies applicability by replacing the phrase "these sections" with "this subchapter." The proposal also replaces a reference to the numerical sections of Subchapter A with "Subchapter A."

Section 3.805. Reserve Liabilities for Variable Life Insurance. The proposal replaces a reference to Article 3.28 with Chapter 425, Subchapter B.

Section 3.806. Separate Accounts. The proposal replaces a reference to Article 3.75 with Chapter 1152, replaces a reference to Article 3.44a with Chapter 1105, and replaces "State Board of Insurance" with "Texas Department of Insurance."

Section 3.811. Savings Clause. The proposal replaces "State Board of Insurance" with "Texas Department of Insurance" in two instances, revises the section to remove a reference to applicability of specific sections that are no longer in the Texas Administrative Code, and it clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter J follow.

Section 3.909. Notification and Disclosure Requirements. The proposal updates the section to remove language that is no

longer necessary because the language addresses compliance in regard to actions occurring before the original effective date of Subchapter J.

Descriptions of the proposed amendments in Subchapter K follow.

Section 3.1001. Authority. The proposal replaces a reference to Article 3.25 with §982.303; replaces a reference to Article 3.28 with Chapter 425, Subchapter B; replaces a reference to Article 3.42 with Chapter 1701; replaces a reference to Article 3.55-1 with Chapter 404; and it clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.1002. Purpose. The proposal replaces a reference to Article 3.28 with Chapter 425, Subchapter B; and it clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.1006. Early Warning Requirements. The proposal replaces the word "his" with "commissioner's" when referring to the commissioner's discretion, replaces the phrase "State Board of Insurance" with "Texas Department of Insurance," and clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter L follow.

Section 3.1101. Strengthened Reserves Pursuant to the Insurance Code, Article 3.28, §9. The proposal replaces a reference to Article 3.28, §9, with §425.067 in the section title; and it makes two such replacements in the text. The proposal also replaces a reference to Article 3.28, §3, with §425.053, and replaces "State Board of Insurance" with "Texas Department of Insurance." The proposal replaces an incorrect reference to Exhibit 8A of an annual statement with Exhibit 5A.

Descriptions of the proposed amendments in Subchapter N follow.

§3.1303. Standard. The proposal specifies that for policies issued on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B provides the tables to be used. The proposal provides additional clarifying information in a reference to an effective date based on a section of the Insurance Code that has been subsequently recodified, by inserting the word "former" and specifying the recodified section in the subsection (a) text, reading, "For any policy of insurance on the life of either a male or female insured, delivered, or issued for delivery in this state after the operative date of the former Insurance Code, Article 3.44a, §8 (recodified in Insurance Code, Chapter 1105, Subchapter B, §§1105.051 - 1105.057), for that policy form, the following tables may be used...". The proposal also updates the mailing address and name of the program area that can provide the table referenced by the section, and it clarifies applicability by replacing the phrase "these sections" with "this section" and "this subchapter."

Section 3.1304. Alternate Rule. The proposal specifies that for policies issued on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B provides the tables to be used. The proposal provides additional clarifying information in a reference to an effective date based on a section of the Insurance Code that has been subsequently recodified, by inserting the word "former" and specifying the recodified section in the subsection (a) text, reading, "In determining minimum cash surrender value and amounts of paid-up non-forfeiture benefits for any policy of insurance on either a male

or a female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of the former Insurance Code, Article 3.44a, §8 (recodified in Insurance Code, Chapter 1105, Subchapter B, §§1105.051 - 1105.057), for that policy form, in addition to the mortality tables that may be used...". The proposal also replaces "State Board of Insurance" with "Texas Department of Insurance" and updates the Life and Health Actuarial program area address.

Section 3.1305. Unfair Discrimination. The proposal replaces a reference to Article 21.21, §4(7)(a), with §541.057.

Descriptions of the proposed amendments in Subchapter O follow.

Section 3.1403. Alternate Tables. The proposal provides additional clarifying information in a reference to an effective date based on a section of the Insurance Code that has been subsequently recodified, by inserting the word "former" and specifying the recodified section in the subsection (a) text, reading, "For any policy of insurance delivered or issued for delivery in this state after the operative date of the former Insurance Code, Article 3.44a, §8, (recodified in Insurance Code, Chapter 1105, Subchapter B, §§1105.051 - 1105.057), for that policy form and before January 1, 1989, at the option of the company and subject to the conditions stated in §3.1404 of this title...". The proposal makes this same change to the text in subsection (c). The proposal also replaces "State Board of Insurance" with "Texas Department of Insurance," updates the mailing address and name of the program area that can provide copies of the tables referenced by the section, and clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.1404. Conditions. The proposal replaces a reference to Article 3.28, §10, with §425.068.

Descriptions of the proposed amendments in Subchapter Q follow.

Section 3.1601. Purpose. The proposal replaces a reference to Article 3.28, §2A, with §425.054.

Section 3.1602. The proposal specifies that Subchapter Q applies to actuarial opinions for the 2005 valuation through the 2016 valuation, but that the requirements of the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, apply to actuarial opinions for valuations on or after January 1, 2017.

Section 3.1605. General Requirements. The proposal replaces a reference to Article 3.28, §2A, with §425.054; replaces a reference to Article 3.28, §6, with §425.064; replaces a reference to Article 3.28, §7, with §425.065; replaces a reference to Article 3.28, §10, with §425.068; and replaces a reference to Article 3.28, §11, with §425.069.

Section 3.1606. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. The proposal replaces a reference to Article 3.28 with Chapter 425, Subchapter B, adds inclusion of an email address to the information that must be provided with a certification under §3.1606(e), and for accuracy changes a reference to a table in paragraph to instead reference the figure that contains the table.

Section 3.1607. Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary. The proposal updates the name and mailing address of the program area where a Texas domestic company

must submit a regulatory asset adequacy issues summary. The proposal specifies that certain actuarial analysis may be submitted by email or paper copy, and provides the addresses for either option. The proposal also replaces the words "his or her" with "commissioner's" when referring to the commissioner's request.

Descriptions of the proposed amendments in Subchapter R, Division 2, follow.

Section 3.1720. Forms. The proposal updates the name and mailing address for the program area to which forms must be submitted under §3.1720.

Descriptions of the proposed amendments in Subchapter R, Division 3, follow.

Section 3.1740. Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms; Fees. In two instances, the proposal updates the name and mailing address for the program area to which submissions must be made under §3.1740. The proposal adds email address, if available, to the list of required information to be provided when filing forms. It also updates the mailing address for TDI's Office of the Chief Clerk.

Section 3.1742. Shopper's Guide. The proposal updates the mailing address and name for the program area that can provide the form addressed in §3.1742.

A description of the proposed amendment in Subchapter R, Division 4, follows.

Section 3.1760. Reporting Requirements. The proposal updates the name and mailing address for the program area that can provide the form addressed in §3.1760.

Descriptions of the proposed amendments in Subchapter S follow.

Section 3.3001. Applicability and Scope. The proposal replaces a reference to Article 3.53 with Chapter 1153. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter," and it addresses individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations, delivered, issued for delivery, or renewed in Texas prior to the effective date of §3.3001, providing that the regulations in effect at the time the policy or contract was delivered, issued for delivery, or renewed applies to such policies and contracts.

Section 3.3009. Policy Definitions of Sickness. The proposal replaces a reference to Article 3.70-3(A)(2) with §1201.208. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.3010. Policy Definition of Physician. The proposal replaces a reference to Article 3.70-2(B) with §1451.001.

Section 3.3038. Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions. The proposal replaces a reference to Chapter 20 with Chapter 842.

Section 3.3039. Other Mandatory Policy Provisions. The proposal replaces a reference to Chapter 20 with Chapter 842, replaces three instances of "Texas Department of Human Services" with "Texas Health and Human Services Commission," replaces one reference to "said department" with the "Texas Health and Human Services Commission," and replaces three "State Board of Insurance" references with "Texas Department of Insurance."

Section 3.3052. Standards for Termination of Insurance Provision. The proposal replaces a reference to Article 3.70-2(C) with §1201.059, and it moves the phrase "this section" from one part of text to another to improve clarity. The proposal also replaces a reference to Article 3.70-7 with §1201.011.

Section 3.3057. Standards for Exceptions, Exclusions, and Reductions Provision. The proposal updates the name and mailing address for the program area that can provide the form addressed in §3.3057(b).

Section 3.3070. Minimum Standards for Benefits Generally. The proposal replaces a reference to Article 3.42 with Chapter 1701 and replaces a reference to Article 3.70-1(F)(1)(a)-(h) with §1201.104. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.3092. Format, Content, and Readability for Outline of Coverage. The proposal replaces a reference to Chapter 20 with Chapter 842. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter" and revises a reference to several sections by adding the sections' headings. The proposal deletes several unnecessary quotation marks.

Section 3.3100. Policy Readability Generally. The proposal replaces a reference to Article 3.70-3(A) with Chapter 1201, Subchapter E; replaces a reference to Article 3.70-3(B) with §§1201.219 - 1201.226; and replaces " article" with " subchapter."

Section 3.3101. Organization of Policy Format for Readability. The proposal replaces a reference to Article 3.70-2(A)(4) with §1201.054.

Section 3.3110. Effective Date; Applicability of Certain Provisions to Policies Deemed Continuous under Insurance Code. The proposal replaces two references to Article 3.70-13 with §1202.001 and adds the phrase "Insurance Code" before one reference to improve clarity. Amendments address individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations, delivered, issued for delivery, or renewed in Texas prior to the effective date of §3.3001, and provide that the regulations in effect at the time the policy or contract was delivered, issued for delivery, or renewed applies to such policies and contracts. Changes also replace two references to the "effective date of this subchapter" with the date of December 22, 1997, which was the effective date of Subchapter S.

A description of the proposed amendment in Subchapter T follows.

§3.3321. Reporting of Multiple Policies. The proposal updates the name and mailing address for the program area that can provide the form addressed in §3.3321.

Descriptions of the proposed amendments in Subchapter U follow.

Section §3.3401. Purpose. The proposal replaces a reference to Article 3.70-2(E) with §1367.003. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.3402. Applicability and Scope. The proposal replaces a reference to Chapter 20 with Chapter 842 and clarifies applicability by replacing the phrase "these sections apply" with "this subchapter applies."

Section 3.3403. General Rules of Application. The proposal replaces 10 references to Article 3.70-2(E) with §1367.003 and replaces two "State Board of Insurance" references with "Texas Department of Insurance." The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter Y, Division 2, follow.

Section 3.3829. Required Disclosures. The proposal updates the mailing addresses and program area names where the forms referenced by §3.3829 can be obtained and where they must be filed, and it updates TDI's website address.

Section 3.3832. Outline of Coverage. The proposal replaces "Texas Department of Aging" with "Texas Health and Human Services Commission."

Section 3.3837. Reporting Requirements. The proposal updates the mailing address and program area name where filings must be submitted under §3.3837(g).

Section 3.3842. Appropriateness of Recommended Purchase. The proposal updates in two instances the mailing address and program area name where filings should be submitted under §3.3842.

Section 3.3849. Requirements for Insurers that Issue Long-Term Care Policies to Associations and Marketing Standards for Associations that Market the Policies. The proposal updates the mailing addresses and program area names for where a reformatted form should be filed under §3.3849(e)(D), where the annual completed certification form should be filed under §3.3849(e)(1)(F)(4), and where the form referenced by §3.3849(e)(E) may be obtained, and it updates TDI's website address.

Descriptions of the proposed amendments in Subchapter Y, Division 4, follow.

Section 3.3871. Standards and Reporting Requirements for Approved Long-Term Care Partnership Policies and Certificates. The proposal updates the mailing address and program area name where forms filed under §3.3871(a)(2)(B)(ii) should be submitted.

Section 3.3873. Filing Requirements for Long-Term Care Partnership Policies.

The proposal, in four instances, updates the mailing addresses and program area names where forms or filings may be obtained or should be filed, and it updates TDI's website address.

Section 3.3874. Insurer Requirements for Agents That Market Partnership Policies and Certificates. The proposal, in three instances, updates the mailing address and program area names where forms or filings may be obtained or should be filed, and it updates TDI's website address.

Descriptions of the proposed amendments in Subchapter Z follow.

Section 3.4001. Purpose. The proposal replaces four references to Article 3.42 with Chapter 1701; replaces "State Board of Insurance" with "Texas Department of Insurance"; replaces a reference to Article 3.42, §(f), with §1701.005(b); and replaces a reference to Article 3.42, §(d)(1), with §1701.054. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.4002. All Forms To Be Filed for Review Unless Specifically Exempted. The proposal replaces a reference to Article 3.42, §(d), with §1701.051 and §1701.054. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.4004. Exempt Forms. The proposal replaces three references to Article 3.42 with Chapter 1701; replaces a reference to Article 3.50 with §1131.003; replaces a reference to Article 3.50, §1(1), with §1131.051; replaces a reference to Article 3.50, §1(2), with §1131.052; replaces a reference to Article 3.50, §1(3), with §1131.054; replaces a reference to Article 3.50, §1(4), with §1131.057; replaces a reference to Article 3.50, §1(5), with §1131.053; replaces a reference to Article 3.50, §1(6)(b), with §1131.064(b); replaces a reference to Article 3.50, §1(7), with §1131.753; replaces a reference to Article 3.50, §1(7A), with §1131.056; replaces a reference to Article 3.50, §1(8), with §1131.058; replaces a reference to Article 3.50, §1(9), with §1131.0802; and replaces a reference to Article 3.50, §1(10), with §1131.060. The proposal also replaces a reference to Article 3.50, §1(5), with §1131.053; replaces two references to Article 3.50, §1(6)(a), with §1131.064; replaces three references to Article 3.51-6, §1(a)(1), with §1251.051; replaces four references to Article 3.5-6, §1(a)(2), with §1251.052; replaces a reference to Article 3.51-6, §2(a)(1) - (8), with §§1251.351 - 1251.358; replaces two references to Article 3.51-6, §1(a)(3), with §1251.053; replaces a reference to Article 3.74 with Chapter 1652; replaces a reference to Article 3.70-12 with Chapter 1651; replaces a reference to Article 3.51-6, §1(a)(6), with §1251.056; and replaces a reference to Article 3.42(c) with §1701.052. In addition, the proposal clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.4005. General Information. The proposal replaces a reference to Article 3.42(c) with §1701.052. The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter AA follow.

The heading of Subchapter AA is revised to replace a reference to Article 3.42 with Chapter 1701.

Section 3.4101. Purpose. The proposal replaces three references to Article 3.42 with Chapter 1701 and replaces two "State Board of Insurance" references with "Texas Department of Insurance." The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Section 3.4102. Coverage Which May Be Exempted. The proposal replaces Article 3.50, §1(1), with §1131.051; replaces two references to Article 3.50, §1(2), with §1131.052; replaces Article 3.51-6, §1(a)(1), with §1251.051; replaces Article 3.51-6, §1(a)(2), with §1251.052; and replaces Article 3.50, §1(1), with §1131.060.

Section 3.4103. Obtaining Exemptions. The proposal replaces four "State Board of Insurance" references with "Texas Department of Insurance" and replaces a reference to Article 3.42 with Chapter 1701.

Section 3.4105. Disciplinary Measures. The proposal replaces "State Board of Insurance" with "Texas Department of Insurance." The proposal also clarifies applicability by replacing the phrase "these sections" with "this subchapter."

Descriptions of the proposed amendments in Subchapter CC follow.

Section 3.4317. Effective Date; Grace Period. The proposal deletes language concerning a 90-day grace period for marketing, delivery, and renewal of certain life insurance policies that applied when the section was initially adopted in 1998.

A description of the proposed amendment in Subchapter EE follows.

Section 3.4503. Applicability. The proposal replaces a reference to the effective date of the subchapter with January 1, 2000, to prevent an unintentional lapse of applicability. The proposal specifies that for all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2017, the requirements of the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, apply.

Section 3.4506. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies). The proposal replaces a reference to Article 3.28 with Chapter 425, Subchapter B.

Descriptions of the proposed amendments in Subchapter FF, Division 1, follow.

Section 3.5002. Definitions. The proposal updates the mailing address and program area name for where forms referenced by §3.5002(11) may be obtained, replaces "web site" with "website," and updates TDI's website address.

Descriptions of the proposed amendments in Subchapter FF, Division 2, follow.

Section 3.5103. Policy Provisions. The proposal replaces a reference to Texas Civil Statutes, Article 5069, Chapters 3-6, 6A, 7, and 15, with Finance Code, Chapters 341, 342, and 345 - 348.

A description of the proposed amendment in Subchapter FF, Division 4, follows.

Section 3.5302. Joint Credit Life Insurance. The proposal replaces a reference to Article 3.53 with Chapter 1153.

Descriptions of the proposed amendments in Subchapter FF, Division 6, follow.

Section 3.5602. Request for an Approved Deviated Premium Rate. The proposal updates the mailing address and name for the program area from which the form referenced by §3.5602 may be obtained, replaces "web site" with "website," and updates TDI's website address.

Section 3.5610 Determination of Approved Deviated Case Rates. The proposal updates the mailing address and name of the program area from which the form addressed by §3.5610(d) may be obtained, replaces "web site" with "website," and updates TDI's website address.

Descriptions of the proposed amendments in Subchapter JJ follow.

Section 3.9101. Purpose. The proposal specifies that for policies issued on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, provides applicable mortality tables. The proposal replaces a reference to Article 3.28, §3(a)(iii), with §425.058(c)(3) and replaces a reference to Article 3.44a, §8(e)(6), with §1105.055(h).

Section 3.9103. 2001 CSO Mortality Table. The proposal specifies that for policies issued on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, provides applicable mortality tables. The

proposal replaces a reference to Article 3.28, §3(a)(iii), with §425.058(c)(3); replaces a reference to Article 3.44a, §8(3)(6), with §1105.055(h); updates the address for TDI's Life and Health Actuarial Program; and updates TDI's website address. Note that Subchapter O (related to Smoker-Nonsmoker Composite Mortality Tables) refers to the CSO Mortality Table in this section, including the application of the adopted valuation manual for policies issued on or after January 1, 2017.

Section 3.9104. Conditions. The proposal replaces a reference to Article 3.28, §10, with §425.068.

Section 3.9106. Gender-Blended Tables. The proposal specifies that for any ordinary life insurance policy delivered or issued for delivery in Texas on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, provides the applicable mortality tables. The proposal updates the mailing address and program area name for the area from which the blended tables addressed by §3.9106 may be obtained, updates TDI's website address, and replaces a reference to Article 21.21 with Chapter 541.

Descriptions of the proposed amendments in Subchapter KK follow.

Section 3.9202. Definitions. The proposal replaces a reference to Article 21.52 with Chapter 1451 and replaces a reference to Article 21.58C with Chapter 4202.

Section 3.9203. Policy and Premium Rates. The proposal replaces "that" with "than" in subsection (c)(3) text, reading, "If the formula or method for calculating the schedule of premium rates and the resulting rates are to be continued beyond a one-year period, the issuer must file with the commissioner, no later than the anniversary of the effective date of the original filing...".

Section 3.9206. Quality Improvement and Utilization Management. The proposal replaces a reference to Article 21.58A with Chapter 4201.

Section 3.9211. Filing of Complaints. The proposal updates TDI's website address.

Section 3.9212. Appeal of Non-Medicaid Adverse Determinations. The proposal replaces a reference to Article 21.58A with Chapter 4201.

Descriptions of the proposed amendments in Subchapter MM follow.

Section 3.9401. Purpose. The proposal specifies that policies issued on or after January 1, 2017, must follow the applicable mortality table requirements provided by the valuation manual adopted under Insurance Code Chapter 425, Subchapter B. The proposal replaces a reference to Article 3.28, §3(a)(iii), with §425.058(c)(3) and deletes the effective date of former Article 3.28, §3(a)(iii).

Section 3.9403. 2001 CSO Preferred Class Structure Table. The proposal specifies that policies issued on or after January 1, 2017, must follow the mortality table requirements provided by the valuation manual adopted under Insurance Code Chapter 425, Subchapter B. The proposal updates the mailing address and name for the program area from which the table addressed by §3.9403 is available, and it updates TDI's website address.

Descriptions of the proposed amendments in Subchapter NN follow.

Section 3.9503. Consumer Notice Content and Format Requirements. The proposal updates the mailing address and name for

the program area from which the promulgated forms specified in Subchapter NN are available, and it updates TDI's website address.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Justin Beam, chief clerk of the Texas Department of Insurance, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the proposed amendments. The proposed amendments update references to currently existing valuation manual requirements applicable to policies issued on or after January 1, 2017. The remainder of the amendments are limited to nonsubstantive changes, including updating statutory citations to reflect the recodification of the Insurance Code; updating website and physical addresses and state agency names to reflect changes; and correcting punctuation, grammatical, and typographical errors. Because the proposed amendments make no substantive changes, they do not add to or decrease state revenues or expenditures or change any requirements placed on local governments.

Mr. Beam does not anticipate any measurable effect on local employment or the local economy as a result of this proposal because the proposed amendments do not make any substantive changes.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Beam expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules are accurate and transparent by reflecting updated Insurance Code references and correct state agency names and addresses and by eliminating errors in punctuation, grammar, and typography.

Mr. Beam expects that the proposed amendments will not increase the cost of compliance for stakeholders because the amendments do not impose substantive changes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses or on rural communities. The proposed amendments are nonsubstantive and update and correct existing rules. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 6, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 6, 2021. If TDI holds a public hearing, TDI will consider comments both written and those presented at the hearing.

SUBCHAPTER A. SUBMISSION REQUIREMENTS FOR FILINGS AND DEPARTMENTAL ACTIONS RELATED TO SUCH FILINGS

28 TAC §§3.2 - 3.4, 3.6, 3.7

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter A under Insurance Code §§1153.005, 1251.008, 1273.005, 1701.060, and 36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §1251.008 states that the Commissioner may adopt rules necessary to administer Chapter 1251.

Insurance Code §1273.005 specifies that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter A implements Insurance Code Chapters 1153, 1251, 1273, and 1701.

§3.2. Definitions.

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

(1) - (3) (No change.)

(4) General use--A filing that will be used with other forms submitted in the filing or with previously approved and exempted forms

for a certain product or products or a subset of a product or type (e.g., an application that will be used with all life products; an application that will be used with all universal life products; an application that will be used with group life and accident and health products; an application that will be used with major medical and hospital surgical products[-]);

(5) (No change.)

(6) Limited, partial refilings--A change to a previously approved or exempted life or annuity form that meets one or more of the criteria set forth in subparagraphs (A) - (D) of this paragraph as follows:

(A) a change in the text, interest rate, guaranteed charges, or mortality table used to compute nonforfeiture [~~non-forfeiture~~] values for life insurance or annuities;

(B) - (D) (No change.)

(7) - (8) (No change.)

(9) Purpose and use--For each submitted form, the purpose and use will be a brief description to include at least the following:

(A) - (D) (No change.)

(E) if applicable, to whom the form is to be marketed (e.g., specific groups such as an annuity contract marketed to issue ages 25 - 60, or a health benefit plan issued to children only, including Insurance Code Chapter 1502 [27]).

(10) (No change.)

§3.3. Transmittal Information.

(a) All filings submitted pursuant to this subchapter must [shall] be accompanied by the department's transmittal checklist except for the documents listed in §3.1(11)(B) of this title [subchapter] (relating to Scope), which must [shall] be accompanied by the department's transmittal form as described in this section. Copies of the transmittal checklist and transmittal form are available from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78701, or 333 Guadalupe, Austin, Texas, 78701~~], or by accessing the department's website at www.tdi.texas.gov/forms [~~www.tdi.state.tx.us~~].

(b) The transmittal checklist must [shall]:

(1) (No change.)

(2) include, at a minimum, the following information:

(A) (No change.)

(B) the contact person information as required in §3.4(b) of this title [subchapter] (relating to General Submission Requirements);

(C) (No change.)

(D) an explanation of the purpose and use of each form as defined in §3.2 of this title [subchapter] (relating to Definitions);

(E) - (F) (No change.)

(G) the applicable authority from the Insurance Code or the Administrative Code under which the form is being submitted as described in §3.5 of this title [subchapter] (relating to Filing Authorities and Categories);

(H) - (J) (No change.)

(K) if the filing is a group filing, it must contain:

(i) A statement specifying the specific group type as set forth in §3.6(c)(1) of this title [subchapter] (relating to Certifications, Attachments, and Additional Information Requirements).

(ii) - (iii) (No change.)

(L) any certifications and attachments, including summary of differences, if applicable, or any additional information required by §3.6 of this title [subchapter], or variable information in accordance with §3.4(e) of this title [subchapter].

(3) (No change.)

(c) The transmittal form must [shall]:

(1) (No change.)

(2) include, at a minimum, the following information:

(A) (No change.)

(B) the contact person information as required by §3.4(b) of this title [subchapter];

(C) an identification of the type of miscellaneous document or information being submitted as described in §3.1(11)(B) of this title [subchapter]; and

(D) (No change.)

(d) - (e) (No change.)

§3.4. General Submission Requirements.

(a) Submission. Companies must [shall] submit one copy of the filing to the Life and Health [Filings Intake] Division at the address set forth in §3.3(a) of this title [subchapter] (relating to Transmittal Information). A filing submitted electronically must [shall] be submitted in such form and format as determined by the department.

(b) Contact person [Person]. A company submitting a filing to the department must [shall]:

(1) (No change.)

(2) provide the contact person's name, address, telephone number, and if available, email address [fax number] on the transmittal checklist or transmittal form;

(3) provide, for any filing submitted by anyone other than the company, a dated letter of specific authorization which must [shall]:

(A) - (B) (No change.)

(4) (No change.)

(c) Form specifications [Specifications]. Any filing submitted pursuant to this subchapter must [shall] comply with the following:

(1) Filings submitted in paper format must [shall]:

(A) be submitted on 8 1/2-by-11-inch [8 1/2 by 11 inch] paper;

(B) - (E) (No change.)

(2) Any form submitted must [shall] be designated by a form number that:

(A) - (B) (No change.)

(C) has the additional identifying form number requirements set forth in Subchapter FF of this chapter (relating to Credit Life and Accident and Health Insurance), if the form is submitted for consideration pursuant to Insurance Code Chapter 1153 [Article 3-53]; and

(D) has the additional identifying form number requirements set forth in §26.14(g) of this title (relating to Coverage), if the

form is submitted for consideration pursuant to Insurance Code Chapter 1501 [26].

(d) Specimen language [Language] and specimen fill-in material [Specimen Fill-in Material].

(1) For all forms, specimen language and fill-in material must [shall] reflect the most restrictive option available under variability. Additional descriptions of variability options must [shall] be provided upon request or as otherwise required.

(2) Life and annuity forms must [shall] be completed with fill-in material for specimen age 35. If the form is not issued at age 35, the fill-in material should [shall] be completed for the youngest age at which the form may be issued. If reduced death benefits are provided for any age at issue, the specimen form must [shall] be filled in for the age at issue for which the greatest reduction in benefits is made. The fill-in material must [shall] be for the longest premium paying period available under the form.

(e) Variable material [Material].

(1) For all forms, any variable material in a form must [shall] be bracketed and [shall] contain a clear explanation of how the material will vary. It is acceptable for certain materials to vary due solely to the age, sex, classification of the insured, plan type such as 403(b) and IRA, telephone numbers, and addresses, depending on the manner in which the company intends to use the variations. The unique form number on a form may not be bracketed as variable.

(2) For individual life forms, the text and specifications of nonforfeiture [~~non-forfeiture~~] assumptions generally cannot be considered variable material.

(f) Matrix filings [Filings]. Policies, certificates, contracts, or applications may be submitted as a matrix filing. Any company submitting a matrix filing:

(1) must [shall] identify each provision with a unique form number that:

(A) - (B) (No change.)

(2) (No change.)

(3) must [shall] list the form number for each provision on the transmittal checklist and provide a statement indicating how the provision will be used and the type of product for which the provision will be used; and

(4) must [shall] provide the certifications required in §3.6(a)(8) of this title [subchapter] (relating to Certifications, Attachments, and Additional Information Requirements).

(g) Insert page filings [Page Filings]. Policies, certificates, and contracts may be submitted with insert pages, or an insert page may be filed subsequent to the approval of a policy, certificate, or contract. Any company submitting an insert page filing:

(1) must [shall] identify each insert page with a unique form number that:

(A) - (B) (No change.)

(2) (No change.)

(3) may use the same insert page to replace an existing page of a previously approved or exempted contract; [s] if used in this manner, the replaced page, as originally filed, must reflect a unique form number that distinguishes it from the other pages of the form or contract;

(4) must [shall] list the form number for each insert page on the transmittal checklist and provide a statement indicating how the insert page will be used and the type of product for which the insert page will be used; and

(5) must [shall] provide the certifications required in §3.6(a)(8) of this title [subchapter].

(h) Limited, partial refilings [Partial Re-filings]. Limited, partial refilings must [shall] contain the change and any additional actuarial information necessary for a comprehensive review of the filing(s).

(i) Outline of coverage [Coverage]. An outline of coverage must [shall] be filed with each individual accident and health policy, group or individual Medicare supplement policy and/or certificate, or group or individual long-term care policy and/or certificate.

(j) Supplemental coverages [Coverages].

(1) Individual accident and health forms submitted pursuant to §3.3080 of this title (relating to Supplemental Coverage) must [shall] be accompanied by the certification required in §3.6(a)(7) of this title [subchapter];

(2) Group life forms submitted pursuant to Insurance Code §1131.051 or §1131.053 must [Article 3.50 §1(4) or (5) shall] be accompanied by the certification required in §3.6(a)(7) of this title [subchapter].

(k) Complete submission [Submission] of policy [Policy] or contract forms [Contract Forms]. For a submission to be considered complete, the submission must [shall] include the following:

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

(l) Riders included [Included] with filing [Filing]. For any rider included with the policy or contract filing, indicate whether the rider is to be used:

(1) - (2) (No change.)

(m) Previously approved [Approved] or exempted forms [Exempted Forms]. Any previously approved or exempted form (e.g., application or rider) to be used with the policy or contract filing need not be resubmitted; however, the filing must [shall] indicate the type of form (e.g., rider, policy, application, etc.), form number, and the approval or exemption date of the previously approved or exempted form. If there is a change in the use of the previously approved or exempted form, the filing must state the form number of the form(s) with which the previously approved or exempted form was designed to be exclusively used, as well as the updated forms list.

(n) Appropriate use [Use] of previously approved [Previously Approved] or exempted forms [Exempted Forms]. The company is responsible for assuring the appropriate use of previously approved or exempted forms. This includes the appropriate use of any riders or other forms such as matrix and insert pages.

(o) Submission of a certificate [Certificate] for policies [Policies] or contracts issued outside [Contracts Issued Outside] of Texas. A copy of the master policy or contract issued outside of Texas must accompany any life, annuity, credit, or accident and health certificate filed for review or filed as exempt, along with certification and evidence that the master policy for the group was lawfully issued and delivered in a state in which the company was authorized to do insurance business.

(p) Rates. Initial and subsequent rate filings must [shall] include all specific descriptions and required information as follows:

(1) policy forms for which the rate filing applies must [shall] be specified on the transmittal checklist or the transmittal form, as applicable;

(2) credit life and credit accident and health filings submitted under Insurance Code Chapter 1153 [Article 3.53] and Subchapter FF of this chapter must [shall] include the rate information;

(3) group and individual Medicare supplement filings submitted under Insurance Code §1652.101 [Article 3.74 §4,] and Subchapter T of this chapter (relating to Minimum Standards for Medicare Supplement Policies) must [shall] include the applicable rate schedule and experience by plan;

(4) group and individual long-term care forms submitted under Insurance Code Chapter 1651 [Article 3.70-12] and Chapter 3, Subchapter Y of this title [chapter] (relating to Standards for Long-Term Care Insurance Coverage Under Individual and Group Policies) must [shall] include the rate schedule;

(5) all individual accident and health filings submitted under Insurance Code Chapter 1701 must [Article 3.42 shall] include the rate schedule; and

(6) rate schedules submitted must [shall] be accompanied by the actuarial information set forth in subsection (q) of this section.

(q) Actuarial information [Information].

(1) Each life filing, including riders, insert pages, or limited partial refilings, which changes the nonforfeiture [non-forfeiture] values of a particular policy or certificate must [shall] be accompanied by the information set forth in subparagraphs (A) - (C) of this paragraph:

(A) The mathematical formulas and sample calculations for the items set forth in clauses (i) - (iv) of this subparagraph.

(i) (No change.)

(ii) specimen nonforfeiture [non-forfeiture] calculations necessary to verify consistency between the nonforfeiture [non-forfeiture] values and the text of the form for years one, 20, and 50;

(iii) (No change.)

(iv) any other calculations necessary to verify nonforfeiture [non-forfeiture] values and reserves.

(B) An actuarial memorandum as specified in clauses (i) and (ii) of this subparagraph, as applicable:

(i) for universal life and interest sensitive forms:

(I) an actuarial memorandum must [shall] provide the mortality table, guaranteed interest rates, maximum surrender charges, maximum expense charges, maximum risk rates (cost of insurance rates), maximum loads, and maximum fees at issue. Upon a change in basic coverage, bands and risk classes for all ages must [shall] be provided.

(II) actuarial proof must [shall] be provided that:

(-a-) cash surrender values meet the minimum requirements of Insurance Code Chapter 1105 [Article 3.44a];

(-b-) - (-c-) (No change.)

(ii) for variable life forms, actuarial information must [shall] be provided as required by §3.804 of this title [chapter] (relating to Insurance Contract and Filing Requirements), and as required by this section.

(C) A statement must [shall] be provided certifying that all policies or certificates, in addition to the specimen language and

fill-in material, will have premiums, reserves, and nonforfeiture [non-forfeiture] values calculated in a manner consistent with the information furnished with the specimen language and fill-in material. Any qualifications to such certification must [shall] be specified, including any variation in formulas at different ages at issue or at time of a change.

(2) For each annuity filing, an actuarial memorandum must [shall] be provided to meet the minimum requirements of Insurance Code Chapter 1107 [Article 3.44b] and specify the guaranteed interest rates, the maximum surrender charges, and any other maximum charges applicable in the determination of nonforfeiture [non-forfeiture] values. If the company intends to change the guaranteed interest rates specified in the form, notification must [shall] be submitted to the department prior to the change. The notification must [shall] specify the new guaranteed interest rate and the date when the new guaranteed interest rate will be effective for new issues of a specified policy form, as required by §3.1004 of this title [chapter] (relating to Policy Form Review).

(A) For variable annuities, the actuarial information must [shall] provide the information required in this paragraph and the information required by §3.705 of this title [chapter] (relating to Contract Requirements), to the extent such material is applicable.

(B) For policies or contracts that contain a market-value adjustment, the actuarial memorandum must [shall]:

(i) - (iii) (No change.)

(iv) include a table of minimum guaranteed policy values and cash surrender values which:

(I) - (II) (No change.)

(III) show that the minimum guaranteed values prior to the adjustment are not less than the minimum nonforfeiture [non-forfeiture] values required by law; and

(v) (No change.)

(3) Group and individual Medicare supplement (including Medicare SELECT) rate filings must [shall] be accompanied by supporting actuarial information as required by Subchapter T of this chapter.

(4) Group and individual long-term care:

(A) rate filings must [shall] be accompanied by supporting actuarial information as required by Subchapter Y of this chapter; and

(B) annual reports must [shall] include the rates, rating schedule, and supporting documentation as required by Insurance Code §1651.053(c) [Article 3.70-12, §4(b)].

(5) Individual accident and health premium rate increases which result in any policyholder experiencing an increase in premium rate greater than or equal to 50% in any 12-month period must be accompanied by actuarial information which includes, at a minimum, the items of information specified in subparagraphs (A) - (E) of this paragraph. For the purpose of this paragraph, an increase in premium rate greater than or equal to 50% in any 12-month period means [shall mean] the cumulative increase with respect to such premium considered over a 12-month period.

(A) - (E) (No change.)

(6) Discretionary group filings must [shall] be accompanied by supporting actuarial information as required by Insurance Code §1131.064 [Articles 3.50 §1(6)] and §1251.056 [3.51-6 §1(a)(6)].

(r) Filing Fee.

(1) The appropriate filing fee for filings for approval (excluding prepaid legal filings) are set forth in subparagraphs (A) - (J) of this paragraph.

(A) - (C) (No change.)

(D) For a filing of rates filed separately from the policy(ies) or contract(s) to which it is applicable, that require approval by the department as specified in §3.1(9) of this title [subchapter] (relating to Scope), a fee of \$100 is required.

(E) - (F) (No change.)

(G) For filings which normally would be considered exempt, but which, due to certain reasons specified in Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review) are required to be submitted to the department for approval, a fee of \$100 is required.

(H) - (J) (No change.)

(2) The appropriate filing fee for a filing exempt under Subchapter Z of this chapter is set forth in subparagraphs (A) - (H) of this paragraph, as follows:

(A) - (C) (No change.)

(D) For a filing of rates filed separately from the exempt policy or contract to which it is applicable, and which is not subject to approval by the department as specified in §3.1(11)(A) of this title [subchapter], a fee of \$50 is required.

(E) For a filing of outlines of coverage filed separately from the exempt policy or contract to which it is applicable, and which is not subject to approval by the department as specified in §3.1(11)(A) of this title [subchapter], a fee of \$50 is required.

(F) For a filing of alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trustee arrangements as defined in Insurance Code §1131.053 and §1251.053 [Articles 3-50, §1(5) and 3-51-6, §1(a)(3)], a fee of \$50 is required.

(G) - (H) (No change.)

(3) (No change.)

(4) Filings as described in §3.1(11)(B) of this title [subchapter shall] require no filing fee.

§3.6. *Certifications, Attachments, and Additional Information Requirements.*

(a) A company must [shall] include the certification(s), attachment(s), and additional information referred to in this section as follows:

(1) A filing must [shall] include the following certifications, as applicable:

(A) Specific certification. Filings submitted as file and use pursuant to §3.5(a)(2) of this title [subchapter] (relating to Filing Authorities and Categories) must [shall] certify that:

(i) - (v) (No change.)

(B) General certification. Filings submitted other than file and use must [shall] certify that:

(i) - (ii) (No change.)

(iii) the company has reviewed the filing;[;] and

(iv) (No change.)

(2) A company submitting a filing as file and use must [shall], in addition to providing the certification specified in paragraph (1) of this subsection, complete the appropriate certification on the transmittal checklist certifying that:

(A) - (B) (No change.)

(3) A company submitting a form substantially similar to a previously approved form or an exact copy of a previously approved form must [shall] provide the certification specified in paragraph (1) of this subsection, and on the transmittal checklist must [shall] provide the following information and certification(s):

(A) - (C) (No change.)

(4) A company submitting a form as a substitution of a previously approved or exempted form must [shall] provide the certification specified in paragraph (1) of this subsection, and on the transmittal checklist must [shall] provide the following information and certification(s):

(A) - (D) (No change.)

(5) A company submitting a form as a correction to a pending form must [shall] provide the certification specified in paragraph (1) of this subsection, and on the transmittal checklist must [shall] provide the following information and certification(s):

(A) - (F) (No change.)

(6) A company submitting a form as a resubmission of a previously disapproved form must [shall] provide the certification specified in paragraph (1) of this subsection, and on the transmittal checklist must [shall] provide the following information and certification(s):

(A) - (F) (No change.)

(7) A company submitting a supplemental coverage filing pursuant to §3.3080 of this title (relating to Supplemental Coverage) or Insurance Code §1131.051 or §1131.053 must [Article 3-50 §1(1) or (5) shall] complete the appropriate certification on the transmittal checklist certifying that the policy will [shall] be marketed only as supplemental coverage.

(8) A company submitting a filing as a matrix filing or as an insert page pursuant to §3.4(f) and (g) of this title [subchapter] (relating to General Submission Requirements) must [shall], in addition to providing the certification specified in paragraph (1) of this subsection, complete the appropriate certification on the transmittal checklist certifying that, when issued, the policies, certificates, contracts, riders, or applications created from such forms comply in all respects with the applicable statutes and regulations of this state and of the United States with regard to the final product issued.

(9) A company submitting a filing as exempt pursuant to §3.5(a)(3) of this title [subchapter] (relating to Filing Authorities and Categories) must [shall], in addition to the certification specified in paragraph (1) of this subsection, complete the appropriate certification on the transmittal checklist certifying:

(A) - (B) (No change.)

(C) the form filed meets the criteria specified in §3.4004 of this title [chapter] (relating to Exempt Forms);

(D) the form filed does not contain any new, uncommon, or unusual provisions, conditions, or concepts as provided in §3.4006 of this title [chapter] (relating to New, Uncommon, and Unusual Forms);

(E) the company submitting the filed form has had a certificate of authority to do such business in Texas for a period not less than two years as required in §3.4007 of this title [chapter] (relating to Newly Licensed Insurers); and

(F) (No change.)

(b) A company must [shall] include any applicable readability certifications, in accordance with Subchapter G of this chapter (relating to Plain Language Requirements for Health Benefit Policies), §3.3092(c) of this title [chapter] (relating to Format, Content, and Readability for Outline of Coverage), §3.3102(g) of this title [chapter] (relating to Language Readability), or any other statutes and regulations of this state.

(c) A company submitting a filing for a group policy or contract must [shall]:

(1) on [On] the transmittal checklist, specify the specific group type under which the form is being filed by indicating the appropriate section [paragraph] as set forth in Insurance Code Chapter 1131 and Chapter 1251 [Articles 3.50 §1 and 3.51-6 §§(1)(a) and (2)(a)], or §21.2702(1) and (2) of this title (relating to Definitions) and for Chapter 26 filings, specify the size of the group. Any filing submitted under an ineligible group type will not be accepted for review by the department, and will be returned to the company as incomplete;[-]

(2) submit [Submit] a separate policy and certificate, each with a unique identifying form number, for each group type that the filing will be issued to; and [-]

(3) submit [Submit] the following required information for certain group filings;[-]

(A) Filings subject to Insurance Code Chapter 26 of this title (relating to Employer-Related Health Benefit Plan Regulations) must [shall] comply with all filing requirements set forth in Chapter 26 of this title. [(relating to Small Employer Health Insurance Regulations);]

(B) Filings to be issued to an association must include a copy of the association's constitution, bylaws, and articles of incorporation that demonstrate that the association meets the requirements of Insurance Code §§1131.060, 1251.052 [Articles 3.50 §1(40); 3.51-6 §1(a)(2)], or [§]21.2702(1) or (2) of this title;[-]

(C) Filings to be issued to an association may be submitted on an "ABC association" basis provided that, if approved, each time the form is issued to a different eligible association, the company submits [shall submit]:

(i) - (ii) (No change.)

(D) Accident and health filings to be issued to associations participating in a multiple association trusteed arrangement must [shall] be accompanied by:

(i) - (ii) (No change.)

(iii) a copy of each eligible association's constitution, bylaws, and articles of incorporation;[-]

(E) A company that has received approval for a filing to be issued to associations participating in a multiple association trusteed arrangement must [shall] notify the department of any subsequent additions of participating associations upon enrollment and [shall] include the documentation required in subparagraph (D) of this paragraph for each association that joins the trust after approval of the initial filing;[-]

(F) Filings to be issued to a multiple employer trusteed group:

(i) must [shall] be accompanied by a copy of the trust agreement;

(ii) must [shall] include an alternate face page for each related industry group, with a unique form number assigned; and

(iii) may be submitted on an "ABC Trust" basis provided that, if approved, each time the form is issued to a different eligible trust, the company submits [shall submit]:

(I) - (II) (No change.)

(d) (No change.)

§3.7. *Form Acceptance and Procedures.*

(a) Acceptance or rejection [Rejection].

(1) - (2) (No change.)

(b) Accepted filings [Filings].

(1) (No change.)

(2) Date for exempt filings. Filings submitted pursuant to Subchapter Z of this chapter (relating to Exemption from Review and Approval of Certain Life, Accident, Health, and Annuity Forms and Expedition of Review) are considered exempt as of the date received by the department; however, such filings are subject to audit as specified in §3.4008 of this title [chapter] (relating to Procedures for Corrections to Non-Compliant Exempt Forms).

(3) (No change.)

(c) Request for correction [Correction].

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

(d) Disapproval of a form [Form].

(1) The department may disapprove any form if:

(A) - (B) (No change.)

(C) the form is a group filing that has been submitted and accepted for review under a group type that is ineligible under the provisions of [the] Insurance Code Chapter 1131 and Chapter 1251 [Articles 3.50 §1 and 3.51-6 §§1(a) and 2(a);] and §21.2702(1) and (2) of this title (relating to Definitions).

(2) (No change.)

(e) Withdrawal of approval [Approval].

(1) (No change.)

(2) The department may, after notice and opportunity for hearing, withdraw previous approval of forms pursuant to Insurance Code §§1701.055(a), 1701.055(d), or 1701.057(a) [Article 3.42(i); (j); or (k)].

(3) (No change.)

(f) Departmental notice [Notice] of action [Action]. The department will [shall] send written or electronic notification, when the processing of the filing has been completed, of any actions taken by the department including, but not limited to, approval, disapproval, withdrawal, or exemption of any filing under this subchapter.

(1) - (3) (No change.)

(4) Notice of other actions including, but not limited to, audits, deficiencies, noncompliance [non-compliance], and withdrawals will be in the form of a letter or electronic notification stating the form number and any deficiencies, if applicable.

(5) (No change.)

(6) Companies must [shall] retain the written notification or a copy of the electronic notification as documentation of the department's action on a form.

(7) The department will maintain copies of the filing and the notice of departmental action and such will [shall] be the official record.

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 October 19, 2021.

TRD-202104165

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER B. INDIVIDUAL LIFE INSURANCE POLICY FORM CHECKLIST AND AFFIRMATIVE REQUIREMENTS

28 TAC §§3.104, 3.105, 3.107, 3.108, 3.114, 3.115, 3.124, 3.127

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter B under Insurance Code §§1153.005, 1251.008, 1273.005, 1701.060, and 36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §1251.008 states that the Commissioner may adopt rules necessary to administer Chapter 1251.

Insurance Code §1273.005 specifies that the Commissioner may adopt rules to implement Chapter 1273, Subchapter A.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.104 implements Insurance Code §1101.006. Section 3.105 implements Insurance Code §705.004. Section 3.107 implements Insurance Code Chapter 1110. Section 3.108 and §3.114 implement Insurance Code Chapter 1105. Section 3.115 and §3.127 implement Insurance Code §1701.060. Section 3.124 implements Insurance Code §841.253.

§3.104. *Incontestable Clause.*

(a) The policy must provide that it will [shall] be incontestable not later than two years from its date as provided in [the] Insurance Code §1101.006 [; Article 3.44(3)]. If a reinstatement is contested for misrepresentation, then no representation other than one causing the reinstatement may be used to contest the policy. Any [; any] contest of the reinstatement may be for a material and fraudulent misrepresentation only and reinstatement may not be contested more than two

years after it is effectuated[;] provided that[;] this provision does not affect the company's right to contest a policy for a representation respecting the initial policy issuance or a different reinstatement during the incontestable period applicable to such issuance or reinstatement. Accidental death benefits and disability benefits need not be subject to such provision.

(b) - (c) (No change.)

§3.105. *Statements of the Insured.*

(a) The policy must provide that all statements made by the insured will [shall], in the absence of fraud, be deemed representations and not warranties. The policy may provide that statements made on behalf of the insured will [shall] also, in the absence of fraud, be deemed representations and not warranties.

(b) Policy applications sometimes contain agreements which call attention to some, or all, of the elements which must be proved in avoiding the policy for misrepresentation. Such agreements are acceptable, provided:

(1) - (2) (No change.)

(3) they do not attempt to permit the insurer to avoid liability on grounds less stringent than under [the] Insurance Code §705.004 [; Article 21.16;] or other applicable law.

§3.107. *Policy Loans.*

(a) - (d) (No change.)

(e) [The] Insurance Code Chapter 1110 [; Article 3.44e;] deals with interest rates. Insurers may comply with Chapter 1110 [Article 3.44e] by refiling reprinted and renumbered policies with a new loan provision or by filing a loan endorsement which may be attached to newly issued policies on and after an effective date specified by the insurer. The maximum rate of interest must be specified in the policy or loan endorsement. The policy may provide that interest may be made payable in advance to the end of the current policy year.

(f) - (h) (No change.)

(i) The loan clause must provide that failure to repay any such advance, or to pay interest thereon, will [shall] not void the policy until the total indebtedness thereon to the company equals [shall equal] or exceeds [exceed] the cash value. The policy may not be terminated merely for failure to pay loan interest when due. Since the policy may be voided when the indebtedness equals or exceeds the cash value, this provision may be so worded that benefits cease upon the precise moment that the indebtedness equals such value.

(j) No condition other than as herein provided will [shall] be exacted as a prerequisite to any such loan.

§3.108. *Automatic Nonforfeiture Benefits.*

(a) Nonforfeiture values are governed by [the] Insurance Code Chapter 1105 [; Article 3.44a].

(b) - (c) (No change.)

§3.114. *Dependent Child Riders and Family Term Riders.*

(a) The rider must specify the effect on the rider of the death of the insured(s) under the base policy prior to the expiry date(s) of the rider. The following are [is] acceptable:

(1) - (2) (No change.)

(3) if paid-up term insurance can be surrendered for its cash value, the rider must contain the "surrender within 30 days" statement required by [the] Insurance Code §1105.007 [; Article 3.44a, §3]; or

(4) (No change.)

(b) If paid-up term insurance is available on the death of the insured under the base policy, the rider or the policy may not provide an incontestable provision for the rider less favorable than specified in [the] Insurance Code §1101.006 [; Article 3.44, §3;] with respect to the coverage for each insured from the date the coverage for that insured becomes effective.

(c) (No change.)

§3.115. *Requirements for a Package Consisting of a Deferred Life Policy with an Accidental Death Rider Attached.*

(a) - (c) (No change.)

(d) The policy schedule page must reflect the reduced death benefit payable each year the reduction in benefits is maintained, as well as the ultimate face amount payable after the full face amount becomes available. This provision may be in the form of actual figures, a percentage of the ultimate face amount, the premiums plus interest, if applicable, or other provision not in violation of [the] Insurance Code Chapter 1701 [; Article 3.42;] or other laws.

(e) - (g) (No change.)

§3.124. *Provisions Relating to Dividends, Coupon Benefits, or Other Guaranteed Returns.*

(a) Any provision by which the insurer undertakes to pay specific amounts will [shall] be treated as definite contract benefits and valued in accordance with [the] Insurance Code §841.253 [; Article 3.11].

(b) (No change.)

(c) Any policy which provides for the payment of dividends, coupon benefits, or other guaranteed returns[;] must specify the disposition which will be made of such accumulations if no option is exercised by the policyholder either on their maturity or in the event of default in premium payments. Acceptable dispositions are that they be:

(1) - (4) (No change.)

§3.127. *Certain Prohibited Provisions.*

(a) (No change.)

(b) The policy may not contain the words "Approved by the Texas Department of Insurance [Board of Insurance Commissioners]," "Approved by TDI [the State Board of Insurance]," "Approved by the commissioner of insurance," or words of a similar import or nature.

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 October 19, 2021.

TRD-202104166

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER C. APPROVAL, DISAPPROVAL, AND WITHDRAWAL OF APPROVAL OF CERTAIN PARTICIPATING POLICY FORMS
28 TAC §§3.203 - 3.205

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter C under Insurance Code §§541.401, 1701.060, and 36.001.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce rules to accomplish the purposes of Chapter 541, relating to deceptive, unfair, and prohibited practices.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.203 implements Insurance Code Chapter 1701. Section 3.204 implements Insurance Code Chapter 1701 and Chapter 541. Section 3.205 implements Insurance Code §541.056(c).

§3.203. *Instructions to Commissioner.*

From and after the effective date hereof, the commissioner will [shall] not approve any "certain participating" policy form as defined herein. The commissioner will [shall] proceed to withdraw approval, under authority of Insurance Code Chapter 1701 [Article 3.42], of any such forms which have heretofore been approved. Without limiting the generality of the legal bases upon which disapprovals or withdrawals of approvals heretofore granted will [shall] be predicated, the department [board] hereby finds and declares as follows:

(1) such policy forms are by their nature unfair, inequitable, misleading, and deceptive, and encourage misrepresentation; and

(2) (No change.)

§3.204. *Material and Information for the Commissioner to [To] Consider.*

When any other type participating policies are being reviewed by the commissioner of insurance for approval or disapproval, the commissioner is authorized to study and take into consideration[;] not only the titles, terms, and text of such policy itself[;] but also the following additional materials, data, evidence, and information[;] to determine whether such policy complies with the provisions hereof and the requirements of the Insurance Code:

(1) - (2) (No change.)

(3) any other matters set forth in Insurance Code Chapter 541 [Article 21.21] or other statute of the Insurance Code;

(4) in the event the commissioner finds that such participating policy and such materials referred to previously do not truthfully, correctly, fairly, honestly, adequately, or properly explain and represent such terms, conditions, promises, and benefits of such policy, the commissioner will [he shall] disapprove such policy under the provisions of [the] Insurance Code Chapter 1701 [; Article 3.42].

§3.205. *Construction of Rules.*

This subchapter may [These sections shall] not be construed to prohibit the use of any provision authorized by [the] Insurance Code §541.056(c) [; Article 21.21, §4, (6);] or other applicable statute.

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 October 19, 2021.

TRD-202104167
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 5, 2021
For further information, please call: (512) 676-6584



SUBCHAPTER D. INDETERMINATE PREMIUM REDUCTION POLICIES

28 TAC §§3.301, 3.302, 3.308, 3.310, 3.311

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter D under Insurance Code §§543.001, 1701.060, and 36.001.

Insurance Code §543.001 provides that the Commissioner may adopt and enforce rules as provided by Chapter 541, Subchapter I, relating to rulemaking, to accomplish the purposes of §543.001(b)(1), prohibiting misrepresentation, as those purposes relate to life insurance companies.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter D implements Insurance Code §543.001.

§3.301. Purpose and Scope.

(a) This subchapter is [These sections are] promulgated to regulate life insurance policies which have the following characteristics:

(1) - (2) (No change.)

(b) A major purpose of this subchapter [these sections] is to promote an accurate presentation and description to the insurance-buying public of the indeterminate premium reduction policy. Adequate disclosure is one of the principal objectives of the sections. The sections attempt to ensure [insure] that prospective insureds receive a fair, adequate, and accurate impression of the true nature of the indeterminate premium reduction policy. Some of the sections also give notice of certain legal interpretations. The sections are supplementary to and cumulative of other statutes and rules including those promulgated under authority of [the] Insurance Code[;] Chapter 541 [21]. This subchapter is [These sections are] applied and interpreted in accordance with the foregoing purposes.

§3.302. Policy Form Submission.

(a) No indeterminate premium reduction policy may be approved for use in Texas unless the insurer files with the Texas Department [State Board] of Insurance in conjunction with such indeterminate premium reduction policy a statement:

(1) that, to the best of its knowledge and belief, the policy submitted is in compliance with this subchapter [these sections];

(2) that advertising and solicitation will be in compliance with this subchapter [these sections];

(3) - (4) (No change.)

(b) (No change.)

§3.308. Minimum Nonforfeiture Values.

The minimum basis for cash values is stated in [the] Insurance Code Chapter 1105[; Article 3.44a], wherein the adjusted premiums are required to be computed as a "uniform percentage of the respective premiums specified by [in] the policy." Maximum guaranteed premiums in the policy are specified premiums as defined by the code. Cash values, if any, will not be required to be redetermined when premiums are reduced for in-force policies. Minimum nonforfeiture values for indeterminate premium group policies on other than the term plan must [shall] be calculated in accordance with this section.

§3.310. Artificial Maximum Premiums Prohibited.

(a) No insurer may incorporate an increment into a maximum premium in an indeterminate premium reduction policy in order to be able to show an increased reduction in later policy years or to reduce cash values if any, as provided in [the] Insurance Code Chapter 1105[; Article 3.44a], or reserves as provided in [the] Insurance Code Chapter 425, Subchapter B[; Article 3.28].

(b) As a condition precedent to policy form approval, there must [shall] accompany each submission of an indeterminate premium reduction policy a certification by a qualified actuary to the following: that the maximum premiums specified in the policy do not incorporate an increment as specified in subsection (a) of this section. An approval of a policy form subsequent to receipt of the foregoing certification may [shall] not be construed as a determination by the Texas Department [State Board] of Insurance that the certification is true and accurate.

§3.311. General Enforcement.

A failure to follow and abide by the representations and disclosure provisions required by this subchapter [these sections] in marketing the indeterminate premium reduction policy is grounds for a withdrawal of approval of the insurer's previously approved indeterminate premium reduction policy forms and is grounds for disapproval of subsequently filed indeterminate premium reduction policy forms. The provisions of this section are additional to and cumulative of all other enforcement provisions provided by law including [the] Insurance Code Chapter 541[; Article 21.21].

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 October 19, 2021.

TRD-202104168
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 5, 2021
For further information, please call: (512) 676-6584



SUBCHAPTER E. GROUP LIFE, AND/OR GROUP ACCIDENT AND HEALTH INSURANCE POLICIES AND CERTIFICATES

28 TAC §3.408

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter E under Insurance Code §§1204.154, 1701.060, and 36.001.

Insurance Code §1204.154 provides that the Commissioner adopt uniform policy provisions, riders, and endorsements for

the policy requirement of Insurance Code §1204.153, relating to payments to the Health and Human Services Commission for certain children.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.408 implements Insurance Code §1204.153.

§3.408. *Mandatory Policy Provisions.*

(a) Each group policy of accident and sickness insurance that is delivered, issued for delivery, or renewed in Texas on or after January 1, 1988, including a policy issued by a company subject to ~~the~~ Insurance Code~~;~~ Chapter 842 ~~[20]~~, must contain a benefit provision which states, "All benefits paid on behalf of the child or children under the policy must be paid to the Texas Health and Human Services Commission ~~[Department of Human Services]~~" whenever:

(1) the Texas Health and Human Services Commission ~~[Department of Human Services]~~ is paying benefits under ~~the~~ Human Resources Code~~;~~ Chapter 31~~;~~ or Chapter 32, i.e., financial and medical assistance service programs administered pursuant to the Human Resources Code; and

(2) (No change.)

(b) The insurer or group nonprofit hospital service company must receive at its home office, written notice affixed to the insurance claim that when the claim is first submitted, and the notice must state that all benefits paid pursuant to this section must be paid directly to the Texas Health and Human Services Commission ~~[Department of Human Services]~~.

(c) With respect to any policy forms approved by the Texas Department ~~[State Board]~~ of Insurance prior to the effective date of this section, an insurer is authorized to achieve compliance with this section by the use of endorsements or riders, provided such endorsements or riders are approved by the Texas Department ~~[State Board]~~ of Insurance as being in compliance with this section and the provisions of the Insurance Code.

(d) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104169

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER G. PLAIN LANGUAGE REQUIREMENTS FOR HEALTH BENEFIT POLICIES

28 TAC §3.601

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter G under Insurance Code §§1501.010, 1501.260, and 36.001.

Insurance Code §1501.010 provides that the Commissioner adopt rules to implement the purpose of Chapter 1501 and meet the minimum requirements of federal law.

Insurance Code §1501.260 requires that health benefit plan issuers use policies and certificates that are written in plain language. Section 1501.260(e) states that a policy or certificate is written in plain language if it achieves the minimum score established by the Commissioner on the Flesch Reading Ease test or an equivalent test selected by the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.601 implements Insurance Code §1501.260.

§3.601. *Purpose and Scope, Applicability, and Definitions Used in This Subchapter.*

(a) Purpose and scope. The sections contained in this subchapter are intended to implement ~~the~~ Insurance Code §1501.260 ~~;~~ Article 26.43~~;~~ and to establish plain language requirements for health benefit plans or forms that will be approved by the department and issued by health carriers in this state. This subchapter establishes ~~[These sections establish]~~ the plain language requirements and minimum score for readability for such health benefit plans or forms, in accordance with ~~the~~ Insurance Code §1501.260 ~~;~~ Article 26.43. This subchapter ~~[These sections]~~ also establishes ~~[establish]~~ procedures that health carriers must follow to demonstrate and assure compliance with the new requirements.

(b) Applicability. This subchapter applies ~~[These sections apply]~~ to all health benefit plans, including policies, certificates, evidences of coverage, riders, endorsements, amendments, and/or applications, approved by the commissioner on or after January 1, 1994, and issued in the State of Texas after such date. This subchapter does ~~[These sections do]~~ not apply to a health benefit plan group master policy or to a health benefit plan group master policy application or to an enrollment form for a health benefit plan group master policy when the enrollment form is used solely to enroll individuals in the plan. This subchapter ~~[These sections]~~ also does ~~[do]~~ not apply to any health benefit plan forms approved by the commissioner under department rules before January 1, 1994.

(c) Definitions.

(1) - (4) (No change.)

(5) Health carrier--Any entity authorized under the Insurance Code to provide health insurance or health benefits in this state, including an insurance company, a group hospital service corporation under ~~the~~ Insurance Code~~;~~ Chapter 842 ~~[20]~~, a health maintenance organization under ~~the~~ Insurance Code~~;~~ Chapter 843 ~~[20A]~~, and a stipulated premium company under ~~the~~ Insurance Code~~;~~ Chapter 884 ~~[22]~~.

(6) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104170

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER H. VARIABLE ANNUITIES

28 TAC §3.702, §3.704

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter H under Insurance Code §1152.002 and §36.001.

Insurance Code §1152.002 specifies that the Commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter H implements Insurance Code §1152.101 and §1152.002.

§3.702. Definitions.

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

(1) - (3) (No change.)

(4) General account--All assets of the insurer other than assets in separate accounts established pursuant to [the] Insurance Code Chapter 1152[, Article 3-75], or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable annuities.

~~{(5) May--Is permissive.}~~

(5) [(6)] Net investment return--The rate of investment return to be credited to the variable annuity contract in accordance with the terms of the contract after deductions for tax charges, if any, and for asset charges either at a rate not in excess of that stated in the contract, or in the case of a contract issued by a nonprofit corporation under which the contractholder participates fully in the investment, mortality, and expense experience of the account, in an amount not in excess of the actual expense not offset by other deductions. The net investment return to be credited to a contract must [shall] be determined at least monthly.

(6) [(7)] Scheduled premium contract--Any variable contract under which both the timing and amount of premium payments are fixed.

(7) [(8)] Separate account--A separate account established pursuant to [the] Insurance Code Chapter 1152[, Article 3-75], or pur-

suant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~{(9) Shall--Is mandatory.}~~

(8) [(10)] Variable annuity contract--Any individual annuity contract or group annuity contract or certificate issued in connection with a group annuity master contract which provides for benefits which vary according to the investment experience of a separate account established and maintained by the insurer as to such contract, pursuant to [the] Insurance Code Chapter 1152[, Article 3-75]. Annuity benefits may be payable in fixed or variable amounts or both.

§3.704. Separate Accounts.

(a) Establishment of separate account. Any domestic life insurance company issuing variable annuity contracts must [shall] establish one or more separate accounts pursuant to [the] Insurance Code Chapter 1152[, Article 3-75].

(1) If no law or other regulation provides for the custody of separate account assets, and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets must [shall] be in writing, and the commissioner has [shall have] authority to review and disapprove both the terms of any such contract and the proposed custodian prior to the transfer of custody.

(2) In connection with the handling of separate account assets, such insurer may [shall] not without prior written approval of the commissioner, employ in any material manner any person who:

(A) - (C) (No change.)

(3) All persons with access to the cash, securities, or other assets allocated to or held by the separate account must [shall] be under bond in the amount of not less than \$100,000.

(b) Amounts in the separate account. The insurer must [shall] maintain in each separate account assets with a value at least equal to the valuation reserves for the variable portion of the variable annuity insurance contracts and other contractual liabilities.

(c) (No change.)

(d) Limitations on ownership.

(1) A separate account may [shall] not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this subchapter [these sections], would exceed 10% of the value of the assets of the separate account. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or the contractholders in this state, the commissioner may in writing waive this limitation.

(2) No separate account may [shall] purchase or otherwise acquire the voting securities of any issuer if, as a result of such acquisition, the insurer and its separate accounts in the aggregate will own more than 10% of the total issued and outstanding voting securities of such issuer. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or the contractholders in this state, the commissioner may in writing waive this limitation.

(3) The percentage limitation specified in paragraph (1) of this subsection may [shall] not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to 15 United States Code §§80b-1 to 80b-21, as amended or other pools of investment assets if the investments and in-

vestment policies of such investment companies or asset pools comply substantially with the provisions of subsection (c) of this section and other applicable portions of this regulation.

(e) Valuation of separate account assets. Investments of the separate account must [shall] be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

(f) Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under §3.703(2)(c) of this title (relating to Qualifications of Insurer To Issue Variable Annuities) may [shall] not be changed without first filing such change with the commissioner.

(1) Any change filed pursuant to this subsection will [shall] be effective 60 days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such 60-day period of [his or her] disapproval of the proposed change. At any time, the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this subsection.

(2) The commissioner may disapprove the change if the commissioner [he or she] determines that the change would be detrimental to the interest of the contractholders participating in such separate account.

(g) Charges against separate accounts. The insurer must disclose in writing, prior to or contemporaneously with delivery of the contract, all charges that may be made against the separate account, including, but not limited to, the following:

(1) - (4) (No change.)

(5) any amounts in excess of those required to be held in the separate account; and

(6) (No change.)

(h) Standards of conduct. Every insurer seeking approval to enter into the variable annuity business in this state must [shall] adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct are [shall be] binding on the insurer and those to whom it refers. A code of ethics meeting the requirements of 15 United States Code §80a-17, as amended, and applicable rules and regulations thereunder will [shall] satisfy the provisions of this subsection.

(i) Conflicts of interest. Rules adopted under any provisions of the Insurance Code or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interests [shall] also apply to members of any separate account's committee or other similar body.

(j) Investment advisory services to a separate account. An insurer may [shall] not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable annuity contracts unless:

(1) - (3) (No change.)

(4) such investment advisory contract must [shall] be in writing and provide that it is subject to review and termination by the commissioner at any time, and that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than 60 days' written notice to the investment advisor. The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if the commissioner

[he or she] deems continued operation thereunder to be hazardous to the public or the insurer's contractholders.

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 October 19, 2021.

TRD-202104171

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER I. VARIABLE LIFE INSURANCE

28 TAC §§3.802 - 3.806, 3.811

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter I under Insurance Code §1152.002 and §36.001.

Insurance Code §1152.002 specifies that the Commissioner may adopt rules that are fair, reasonable, and appropriate, to augment and implement Chapter 1152, including rules establishing requirements for agent licensing, standard policy provisions, and disclosure.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter I implements Insurance Code §1152.101.

§3.802. Definitions.

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

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

(10) Control (including the terms "controlling," "controlled by," and "under common control with")--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is [shall be] presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than 10% of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(11) (No change.)

(12) General account--All assets of the insurer other than assets in separate accounts established pursuant to [the] Insurance Code

Chapter 1152 [; Article 3.75], or pursuant to the corresponding sections of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

(13) (No change.)

~~[(14) May—Is permissive.]~~

(14) ~~[(15)]~~ Minimum death benefit--The amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life contract regardless of the investment performance of the separate account.

(15) ~~[(16)]~~ Net cash surrender value--The maximum amount payable to the contract owner upon surrender.

(16) ~~[(17)]~~ Net investment return--The rate of investment return in a separate account to be applied to the benefit base.

(17) ~~[(18)]~~ Person--An individual, corporation, partnership, association, trust, or fund.

(18) ~~[(19)]~~ Scheduled premium contract--Any variable life contract under which both the amount and timing of premium payments are fixed by the insurer.

(19) ~~[(20)]~~ Separate account--A separate account established pursuant to ~~[the]~~ Insurance Code Chapter 1152 [; Article 3.75], or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

(20) ~~[(21)]~~ Structural changes--Those changes which are separate from the automatic workings of the contract. Such changes usually would be initiated by the contract owner and include changes in the guaranteed benefits, changes in latest maturity date, or changes in allowable premium payment period.

~~[(22) Shall—Is mandatory.]~~

(21) ~~[(23)]~~ Variable death benefit--The amount of the death benefit, other than incidental benefits payable under a variable life contract dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

(22) ~~[(24)]~~ Variable life contract--Any individual variable life insurance contract which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such contract, pursuant to ~~[the]~~ Insurance Code Chapter 1152 [; Article 3.75], or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

§3.803. *Qualifications of Insurer to Issue Variable Life Insurance.*

The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having the authority to issue variable life insurance in this state.

(1) Licensing and approval to do business in this state. An insurer may ~~[shall]~~ not deliver or issue for delivery in this state any variable life insurance contracts unless:

(A) (No change.)

(B) after having complied with the provisions of ~~[the]~~ Insurance Code Chapter 1152 [; Article 3.75], concerning notice and hearing, the commissioner has authorized, either as part of the insurer's original certificate of authority or by charter amendment, the insurer to issue, deliver, and use variable life contracts, and only after the commissioner ~~[he or she]~~ has considered among other things the following:

(i) - (ii) (No change.)

(iii) whether the present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such contracts is not likely to render its operation hazardous to the public or its contractholders ~~[contract holders]~~ in this state. The commissioner will ~~[shall]~~ consider, among other things:

(I) - (II) (No change.)

(III) the applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life contracts. The state of entry of an alien insurer will ~~[shall]~~ be deemed its state of domicile for this purpose; and

(IV) if the insurer is a subsidiary of, or is affiliated by common management or ownership with, another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

(2) Filing for approval to do business in this state. Before any insurer may deliver or issue for delivery any variable life contract in this state, it must file with the Texas Department ~~[State Board]~~ of Insurance the following information, and any other information specifically requested, for the consideration of the commissioner, on making the determination required by paragraph (1)(B) of this section ~~[rule]~~:

(A) - (B) (No change.)

(C) with respect to any separate account maintained by an insurer for any variable life contract, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy must ~~[shall]~~ include a description of the investment objectives intended for the separate account;

(D) - (G) (No change.)

(H) the provisions of subparagraphs (A) - (G) of this paragraph will ~~[shall]~~ be deemed to have been satisfied to the extent that the information required by the commissioner is provided in form identical to the insurer's registration statement filed under 15 United States Code §77a, et seq.

(3) Standards of suitability. Every insurer seeking approval to enter into the variable life insurance business in this state must ~~[shall]~~ establish and maintain a written statement specifying the standards of suitability to be used by the insurer. Such standards of suitability must ~~[shall]~~ specify that no recommendation will ~~[shall]~~ be made to an applicant to purchase a variable life contract and that no variable life contract will ~~[shall]~~ be issued in the absence of reasonable grounds to believe that the purchase of such contract is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the agent making the recommendation.

(4) Use of sales material. An insurer authorized to transact variable life insurance business in this state may ~~[shall]~~ not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state unless it complies with §§21.101 - 21.122 of this title (relating to Insurance Advertising, Certain Trade Practices, and Solicitation). An insurer issuing flexible premium variable life contracts must ~~[shall]~~ provide, to all prospective purchasers, an illustration of cash surrender values prior to or at the time of delivery of the contract. Any illustration of cash surrender values delivered to an applicant or prospective applicant pursuant to this subsection must ~~[shall]~~:

(A) - (E) (No change.)

(5) Requirements applicable to contractual services. Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations must [shall] be in writing and provide that the supplier of such services furnish the commissioner with any information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations, and any other applicable law or regulations.

(6) Reports to the commissioner. Any insurer authorized to transact the business of variable life insurance in this state must [shall] submit to the commissioner, in addition to any other materials which may be required by this subchapter [these sections] or any other applicable laws or rules:

(A) - (B) (No change.)

(C) prior to use in this state, the form of any of the reports to contractholders [contract holders] as provided for in §3.809 of this title (relating to Reports to Contractholders); and

(D) such additional information concerning its variable life insurance operations or its separate accounts as the commissioner deems [shall deem] necessary.

(7) Treatment of material reported under paragraph (6) of this section. Receipt of the material specified in paragraph (6) of this section does not imply approval or acceptance of the material. The commissioner will [shall] require the redistribution of any previously distributed material which is found to be false, misleading, deceptive, or inaccurate in any material respect.

(8) Authority of the commissioner to disapprove. Any material required to be filed with the commissioner, or approved by the commissioner [him or her], will [shall] be subject to disapproval if at any time it is found by the commissioner [him or her] not to comply with the standards established by these rules.

§3.804. Insurance Contract and Filing Requirements.

The commissioner will [shall] not approve any variable life insurance form filed pursuant to these rules unless it conforms to the requirement of applicable law.

(1) Filing of variable life contracts. All variable life contracts, and all riders, endorsements, applications, and other documents which are to be attached to and made a part of the contract and which relate to the variable nature of the contract, must [shall] be filed with the commissioner and approved or exempted, as applicable, by the commissioner [him or her] prior to delivery or issuance for delivery in this state.

(A) Each variable life contract, rider, endorsement, and application must [shall] be filed in accordance with Subchapter A of this chapter (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings [§§3.1 - 3.8 of this title (relating to Preparation and Submission of Individual Life Insurance and Annuity Forms)]). A flexible premium variable life contract submission must [shall] be accompanied by the following:

(i) a mathematical demonstration comparing the specimen contract's cash surrender values, assuming the contract's assumed investment rate, if any, or in the absence of an assumed investment rate, on a rate not to exceed the maximum interest rate allowed by [the] Insurance Code Chapter 1105 [; Article 3.44a], to the minimum cash surrender value described in paragraph (2)(F) of this section. The specimen contract should be for the minimum initial face amount permitted to be issued to a male age 35. The demonstration

should not assume changes in face amount which are optional to the contractholder. The maturity date and the premium paying period should be the maximum permitted by the contract. The premium for each year should be the greater of the minimum premium permitted for that year or the premium that will allow the contract to mature at the maturity date assuming guaranteed charges and the assumed investment rate, if any, or, in the absence of an assumed investment rate, a rate not to exceed the maximum interest rate permitted by [the] Insurance Code Chapter 1105 [; Article 3.44a];

(ii) an actuarial description which sets forth maximum expense charges, loads, and surrender charges, applicable to the contract at issue and upon a change in basic coverage for all ages, bands, and classes of risk, will [shall] be provided in conjunction with the contract.

(B) (No change.)

(2) Mandatory contract benefit and design requirements. Variable life contracts delivered or issued for delivery in this state must [shall] comply with the following minimum requirements.

(A) Mortality and expense risks must [shall] be borne by the insurer. The expense charges must [shall] be subject to the maximums stated in the contract. The charge for mortality must [shall] be stated in the contract and may [shall] not exceed a mortality rate for the attained age of the insured in a table specified for the calculation of cash surrender values in [the] Insurance Code Chapter 1105 [; Article 3.44a]. Provided, for insurance issued on a substandard basis, the charge for mortality may be the mortality rate for the attained age of the insured in such other tables as may be specified by the company and approved by the Texas Department [State Board] of Insurance.

(B) For scheduled premium contracts, a minimum death benefit must [shall] be provided in an amount at least equal to the initial face amount of the contract so long as premiums are duly paid (subject to paragraph (4) of this section).

(C) The contract must [shall] reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life contract is actuarially sound.

(D) Each variable life contract must [shall] be credited with the full amount of the net investment return applied to the benefit base.

(E) Any changes in variable death benefits of each variable life contract must [shall] be determined at least annually.

(F) The cash surrender value of each variable life contract must [shall] be determined at least monthly. The method of computation of cash surrender values and other nonforfeiture benefits, as described in the contract and in a statement filed with the commissioner in this state in which the contract is delivered, or issued for delivery, must [shall] be in [a] accordance with recognized actuarial procedures that recognize the variable nature of the contract. The method of computation must be such that if the net investment return credited to the contract at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the contract, then the resulting cash surrender values and other nonforfeiture benefits must be at least equal to the minimum values required by [the] Insurance Code Chapter 1105 [; Article 3.44a], for a general account contract with such premiums and benefits. The assumed investment rate may [shall] not exceed the maximum interest rate permitted under [the] Insurance Code Chapter 1105 [; Article 3.44a]. If the contract does not contain an assumed investment rate, this demonstration must [shall] be based on a rate not to exceed the maximum interest rate permitted under [the] Insurance Code Chapter 1105

[, Article 3.44a]. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include for example, but are not limited to, a guarantee that the amount payable at death or maturity is is [shall be] at least equal to the amount that otherwise would have been payable if the net investment return credited to the contract at all times from the date of issue had been equal to the assumed investment rate.

(3) Mandatory contract provisions. Every variable life contract filed for approval in this state must [shall] contain at least the following.

(A) The cover page or pages corresponding to the cover page of each contract must [shall] contain:

(i) - (v) (No change.)

(vi) such other items as are currently required for fixed benefit life contracts and which are not inconsistent with this subchapter [these sections].

(B) A grace period in accordance with this subparagraph.

(i) For scheduled premium contracts, a provision for a grace period of not less than 31 days from the premium due date which must [shall] provide that when the premium is paid within the grace period, cash surrender values will be the same, except for the deduction of any overdue premium, as though [if] the premium were paid on or before the due date.

(ii) For flexible premium contracts, a provision for a grace period beginning on the contract processing day when the total charges authorized by the contract that are necessary to keep the contract in force until the next contract processing day exceed the amounts available under the contract to pay such charges in accordance with the terms of the contract. Such grace period must [shall] end on a date not less than the later of the date 61 days after the contract processing day when the grace period begins,^[§] or the date which is 31 days after the mailing date of the report to contractholders required by §3.809(3) of this title (relating to Reports to Contractholders). The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the contract processing days occur monthly, the insurer may require payment of an amount equal to the greater of:

(I) - (II) (No change.)

(C) - (D) (No change.)

(E) A provision designating the separate account to be used and stating that:

(i) the assets of such separate account must [shall] be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life contracts supported by the separate account; and

(ii) the assets of such separate account must [shall] be valued at least as often as any contract benefits vary but at least monthly.

(F) (No change.)

(G) A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his or her behalf, are [shall be] considered as representations and not warranties.

(H) - (K) (No change.)

(L) A provision that the contract will [shall] be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the contract's death benefits subsequent to the contract issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, will [shall] be incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase.

(M) A provision stating that the investment policy of the separate account may [shall] not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state.

(N) (No change.)

(O) If settlement options are provided,^[§] at least one such option must [shall] be provided on a fixed basis only.

(P) A detailed and complete definition for the basis for computing the contract value and the cash surrender value of the contract. For flexible premium variable life contracts, the definition must [shall] include the following:

(i) (No change.)

(ii) any limitation on the crediting of additional interest. Interest credits may [shall] not remain conditional for a period longer than 12 months;

(iii) - (vi) (No change.)

(Q) Premiums or charges for incidental insurance benefits must [shall] be stated separately.

(R) Any other contract provisions required by this subchapter [these sections].

(S) Such other items as are currently required for fixed benefit life insurance contracts and are not inconsistent with this subchapter [these sections].

(T) (No change.)

(U) If a flexible premium contract does not provide for a guarantee of death benefit coverage, but does provide for a "maturity date," "end date," or similar date, then the contract must [shall] also contain a statement, in close proximity to that date, that it is possible that the coverage may not continue to the maturity date even if scheduled premiums are paid in a timely manner.

(4) Contract loan provision. Every variable life contract, other than term insurance contracts and pure endowment contracts, delivered or issued for delivery in this state must [shall] contain provisions which are not less favorable to the contractholders than the following.

(A) A provision for contract loans after the contract has been in force for one full year which provides the following:

(i) (No change.)

(ii) the amount borrowed must [shall] bear interest at a rate not to exceed that permitted by [the] Insurance Code Chapter 1110 [, Article 3.44e];

(iii) any indebtedness must [shall] be deducted from the proceeds payable on death;

(iv) any indebtedness must [shall] be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

(B) For scheduled premium contracts, whenever the indebtedness exceeds the cash surrender value, the insurer must [shall] give notice of any intent to cancel the contract if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice. For flexible premium contracts, whenever the total charges authorized by the contract that are necessary to keep the contract in force until the next following contract processing day exceed the amounts available under the contract to pay such charges, a report must be sent to the contractholder containing the information specified by §3.809(3) of this title (relating to Reports to Contractholders).

(C) (No change.)

(D) The contract may specify a reasonable minimum amount which may be borrowed at any time, but such minimum may [shall] not apply to any automatic premium loan provision.

(E) (No change.)

(F) The contract loan provisions must [shall] be constructed so that variable life insurance contractholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

(G) Amounts paid to the contractholders upon the exercise of any contract loan provision must [shall] be withdrawn from the separate account and must [shall] be returned to the separate account upon repayment except that a stock insurer may provide the amounts for contract loans from the general account.

(5) Other contract provisions. The following provisions may in substance be included in a variable life contract or related form delivered or issued for delivery in this state:

(A) an exclusion for suicide within two years of the issue date of the contract, if provided, however, that to the extent of the increased death benefits only, the contract may provide an exclusion for suicide within two years of any increase in death benefits which result from an application or request of the owner subsequent to the contract issue date;

(B) (No change.)

(C) contracts issued on a participating basis must [shall] offer to pay dividend amounts in cash. In addition, such contracts may offer the following dividend options:

(i) - (v) (No change.)

(D) - (F) (No change.)

§3.805. *Reserve Liabilities for Variable Life Insurance.*

(a) Reserve liabilities for variable life insurance contracts must [shall] be established under [the] Insurance Code Chapter 425, Subchapter B [, Article 3-28], in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(b) For scheduled premiums contracts, reserve liabilities for the guaranteed minimum death benefit must [shall] be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and [shall] be maintained in the general account of the insurer and must [shall] not be less than the greater of the following minimum reserve:

(1) (No change.)

(2) the aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract must [shall] not be less than zero and must [shall] equal the "residue," as described in subparagraph (A) of this paragraph, of the prior year's "attained age level" reserve in the contract, with any such "residue," increased or decreased by a payment computed on an attained-age basis as described in subparagraph (B) of this paragraph.

(A) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract may [shall] not be less than zero and must [shall] be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence must [shall] be based in the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(B) The payment referred to in this paragraph must [shall] be computed so that the present value of a level of that amount each year over the future premium paying period of the contract is equal to (i) minus (iii), where:

(i) - (ii) (No change.)

(iii) is any "residue," as described in subparagraph (A) of this paragraph, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid up [paid-up], the payment must [shall] equal (i) minus (ii) minus (iii). The amounts of the future death benefits referred to in clause (ii) of this paragraph must [shall] be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

(3) The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraph (2)(A) and (B) of this subsection must [shall] conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the insurer may employ suitable approximations and estimates, including, but not limited to, groupings and averages.

(c) For flexible premium contracts, reserve liabilities for any guaranteed minimum death benefit must [shall] be maintained in the general account of the insurer and may [shall] not be less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate. The valuation interest rate and mortality table used in computing this additional reserve, if any, must [shall] conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the insurer may employ suitable approximations and estimates, including, but not limited to, groupings and averages.

(d) Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits must [shall] be maintained in the general account, and reserve liabilities for all variable aspects of the variable incidental insurance benefits must [shall] be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

§3.806. *Separate Accounts.*

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer.

(1) Establishment of separate accounts. Any domestic life insurance company issuing variable life contracts must [shall] establish one or more separate accounts pursuant to [the] Insurance Code Chapter 1152 [; Article 3-75].

(A) If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets must [shall] be in writing and the commissioner has [shall have] authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

(B) In connection with the handling of separate account assets, such insurer may [shall] not without prior written approval of the commissioner, employ in any material manner any person who:

(i) - (iii) (No change.)

(C) All persons with access to the cash, securities, or other assets allocated to or held by the separate account must [shall] be under bond in the amount of not less than \$100,000.

(2) Amounts in the separate account. The insurer must [shall] maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance contracts or the benefit base for such contracts.

(3) Investments by the separate account.

(A) (No change.)

(B) The separate account must [shall] have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under contracts funded by the account.

(4) Limitations on ownership.

(A) A separate account may [shall] not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investment of such account in such security valued as required by these rules, would exceed 10% of the value of the assets of the separate account. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or contractholders in this state, the commissioner may in writing waive this limitation.

(B) No separate account may [shall] purchase or otherwise acquire the voting securities of any issuer if, as a result of such acquisition, the insurer and its separate accounts in the aggregate will own more than 10% of the total issued and outstanding voting securities of such issuer. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or the contractholders in this state, the commissioner may in writing waive this limitation.

(C) The percentage limitations specified in subparagraph (A) of this paragraph may [shall] not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to 15 United States Code §§80b-1 - 80b-21, as amended, or other pools of investment assets if the investments and investment policies of such investment companies or

asset pools comply substantially with the provisions of paragraph (3) of this section and other applicable portions of this regulation.

(5) Valuation of separate account assets. Investments of the separate account must [shall] be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

(6) Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under §3.803(2)(C) of this title (relating to Qualification of Insurer to Issue Variable Life Insurance) may [shall] not be changed without first filing such change with the commissioner.

(A) Any change filed pursuant to this paragraph will [shall] be effective 60 days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such 60-day period of the commissioner's [his or her] disapproval of the proposed change. At any time, the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this paragraph.

(B) The commissioner may disapprove the change if the commissioner [he or she] determines that the change would be detrimental to the interests of the contractholders participating in such separate accounts.

(7) Charges against separate account. The insurer must disclose in writing, prior to or contemporaneously with delivery of the contract, all charges that may be made against the separate account, including, but not limited to, the following:

(A) - (B) (No change.)

(C) actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities. The tabular costs of insurance may [shall] not exceed the mortality rate for the attained age of the insured in the table specified for the calculation of cash surrender values in [the] Insurance Code Chapter 1105, [Article 3.44a.] provided [Provided], for insurance issued on a substandard basis, the charge for mortality may be the mortality rate for the attained age of the insured in such other table as may be specified by the company and approved by the Texas Department [State Board] of Insurance;

(D) - (G) (No change.)

(8) Standards of conduct. Every insurer seeking approval to enter into the variable life insurance business in this state must [shall] adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct are [shall be] binding on the insurer and those to whom it refers. A code of ethics meeting the requirements of 15 United States Code §80a-17, as amended, and applicable rules and regulations thereunder satisfies [shall satisfy] the provisions of this paragraph.

(9) Conflicts of interest. Rules under any provision of the Insurance Code or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest [shall] also apply to members of any separate account's committee or [or] other similar body.

(10) Investment advisory services to a separate account. An insurer may [shall] not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance contracts unless:

(A) - (B) (No change.)

(C) the insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed advisor:

(i) the name and form of the organization, and its principal place of business;

(ii) - (iv) (No change.)

(D) such investment advisory contract must [shall] be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than 60 days' written notice to the investment advisor. The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if the commissioner [he or she] deems continued operation thereunder to be hazardous to the public or the insurer's contractholders.

§3.811. Savings Clause.

Each cause of action, pending litigation, or matter in process before the Texas Department [State Board] of Insurance or commissioner of insurance will [; or matter hereafter arising from an event occurring prior to the time these sections become effective shall] be determined in accordance with and governed by [§§3.821 - 3.830 of this title (relating to Rules and Regulations for Variable Life Insurance) and by] the [provisions of other] applicable statutes, rules, orders, or interpretations of the Texas Department [State Board] of Insurance in effect at the time of the occurrence of the subject event; and this section operates to save the application of such past procedure and law to any such event from amendment, change, or repeal, notwithstanding any provision of this subchapter [these sections] or any conflict or ambiguity therein.

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 October 19, 2021.

TRD-202104172

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER J. REQUIRED REINSTATEMENT RELATING TO MENTAL INCAPACITY OF THE INSURED FOR INDIVIDUAL LIFE POLICIES WITHOUT NONFORFEITURE BENEFITS

28 TAC §3.909

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter J under Insurance Code §1106.010 and §36.001.

Insurance Code §1106.010 provides that the Commissioner adopt rules to implement Chapter 1106.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.909 implements Insurance Code §1106.009.

§3.909. Notification and Disclosure Requirements.

(a) The insurer is required to send notice of the conditions set forth in this subchapter under which the policy may qualify for reinstatement due to the mental incapacity of the insured. The notice must be sent to the owner of any individual life policy which does not provide nonforfeiture benefits if the policy is in force, renewed or issued on or after September 1, 1995. The notice required to be provided by this subsection must [shall either] be[;]

[(1)] provided within 90 days following lapse of an eligible policy. [; or]

[(2)] provided to existing policyholders within 90 days after the effective date of the Insurance Code, Article 3.44d, or if this subchapter is not effective on or before 90 days after the effective date of Article 3.44d, no later than February 1, 1996.]

(b) For all policies issued on or after September 1, 1995, disclosure of the conditions set forth in this subchapter under which the policy may qualify for reinstatement due to the mental incapacity of the insured may be made by incorporating the language of §3.913 of this title (relating to Notice and Disclosure Form), either in the policy or in an endorsement attached to the policy, in lieu of the notice requirements set forth in subsection (a) of this section. [If this method is elected by the insurer, for policies issued on or after September 1, 1995, but prior to the effective date of this subchapter, the language of §3.913 of this title (relating to Notice and Disclosure Form) shall be incorporated no later than February 1, 1996.]

(c) The notice required to be provided by this subsection will be deemed to be in compliance if mailed by first class mail to the last known address of the policyholder or if contained in the policy or included as an endorsement thereto.

(d) The notice required by this subsection must [shall] be provided in the form set forth in §3.913 of this title (relating to Notice and Disclosure Form).

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 October 19, 2021.

TRD-202104173

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER K. MAXIMUM GUARANTEED INTEREST RATES FOR ANNUITIES, PURE ENDOWMENT CONTRACTS, AND MISCELLANEOUS FUNDS

28 TAC §§3.1001, 3.1002, 3.1006

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter K under Insurance Code §1701.060 and §36.001.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter K implements Insurance Code Chapter 425.

§3.1001. Authority.

This subchapter is [These sections are] prescribed and promulgated in respect to the provisions of [the] Insurance Code §982.114; Chapter 425, Subchapter B; Chapter 1701; Chapter 404; [; Article 3-25; 3-28; 3-42; 3-55-1;] and other applicable provisions.

§3.1002. Purpose.

It is the purpose of this subchapter [these sections]:

(1) - (2) (No change.)

(3) to clarify the interpretation of Insurance Code Chapter 425, Subchapter B, [Article 3-28] as it relates to the computation of reserves for annuity contracts and miscellaneous funds.

§3.1006. Early Warning Requirements.

The commissioner may, at the commissioner's [his] discretion, require the data specified in this section from any insurance companies which are subject to this subchapter [these sections]. These requirements apply to individual annuities, group annuities, and any supplemental provisions of riders attached to an individual life insurance policy or a group life insurance policy[;] whenever on any valuation date contracts of the nature described are in force which guarantee interest rates in excess of the applicable maximum reserve valuation interest rate as defined by the Standard Valuation Law for that type of annuity or pure endowment contract to future premiums or other deposits of unspecified amounts or timing for or at any period of time subsequent to the valuation date. (Foreign companies will be required to furnish this data only with respect to their Texas issues.) Required data:

(1) - (3) (No change.)

(4) an evaluation of the potential liability with respect to premiums or other deposits which may be received subsequent to the valuation date calculated in the following manner. Potential liability is the excess, if any, of the present value of the future cash value generated by "assumed future premiums" at the end of the last period of interest guarantees higher than the maximum reserve valuation rate as defined by the Standard Valuation Law for that type of annuity or pure endowment contract over the present value of "assumed future premiums" all valued at the maximum reserve valuation rate as defined by the Standard Valuation Law for that type of annuity or pure endowment contract. (If interest rate guarantees higher than the applicable maximum reserve valuation interest rate as defined by the Standard Valuation Law for that type of annuity or pure endowment contract extend beyond attained age 70 of the applicable individual, then the present value of future cash values may be calculated at the 10th anniversary of the contract or on the anniversary nearest age 70, whichever is later.)

(A) "Assumed annual future premiums" must [shall] be level and equal in amount to the average annual premium received over the duration of the contract, counting any contract which is less than one year old as being a full year old.

(B) - (C) (No change.)

(D) If the probability of death is introduced into the above calculation, a statement of methods of application, including any

subsequent changes, must be filed with the Texas Department [State Board] of Insurance along with a certification by a qualified actuary that introduction of such probability is appropriate to the contracts to which it is to be applied.

(E) (No change.)

(5) The validity of all such data and methods as specified in paragraphs (1) - (4) of this section must [shall] be attested to by the actuary signing the annual convention blank.

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 October 19, 2021.

TRD-202104174

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER L. STRENGTHENED RESERVES PURSUANT TO [THE] INSURANCE CODE §425.067[; ARTICLE 3-28, §9]

28 TAC §3.1101

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter L under Insurance Code §425.067 and §36.001.

Insurance Code §425.067 authorizes the Commissioner to establish categories of necessary reserves for certain policies, benefits, or contracts issued by life insurance companies.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter L implements Insurance Code §425.067.

§3.1101. Strengthened Reserves Pursuant to [the] Insurance Code §425.067 [; Article 3-28, §9].

A life insurance company may increase the amount of its reserve liabilities by changing the basis of computation as provided in [the] Insurance Code §425.067 [; Article 3-28, §9]. The insurer may establish a higher reserving basis by reporting an increase in reserve in Exhibit 5A [8A] of its annual statement. Thereafter the insurer must [shall] continue to report on the higher basis. An insurer may, with the approval of the Texas Department [State Board] of Insurance, as provided in [the] Insurance Code §425.067 [; Article 3-28, §9], adopt a lower standard of valuation, but not lower than the minimum standard provided in [the] Insurance Code §425.053 [; Article 3-28, §3].

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

Filed with the Office of the Secretary of State on October 19, 2021.



SUBCHAPTER N. NONFORFEITURE STANDARDS FOR INDIVIDUAL LIFE INSURANCE IN EMPLOYER PENSION PLANS

28 TAC §§3.1303 - 3.1305

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter N under Insurance Code §§425.073, 541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §541.057 prohibits unfair discrimination in the rates, dividends, or any other contract terms and conditions for individuals of the same class and life expectancy in life insurance and annuity contracts.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Chapter 541.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.1303 and §3.1304 implement Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057. Section 3.1305 implements Insurance Code §541.057.

§3.1303. *Standard.*

(a) For any policy of insurance on the life of either a male or female insured, delivered, or issued for delivery in this state after the operative date of former [the] Insurance Code, Article 3.44a, §8 (recodified in Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057), and before January 1, 2017, for that policy form, the following tables described in paragraphs (1) and (2) of this subsection may be used as specified in subsection (b) of this section in determining minimum cash surrender values, amounts of paid up nonforfeiture benefits, or benefits under extended term insurance provisions included in the policy. For policies issued on or after January 1, 2017, the valuation manual, adopted under Insurance Code Chapter 425, Subchapter B, provides the tables to be used.[:]

(1) A [a] mortality table which is a blend of the 1980 CSO Table (M) and 1980 CSO Table (F), with or without Ten-Year Select Mortality Factors, may, at the option of the company, be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.[: and]

(2) A [a] mortality table which is of the same blend as used in paragraph (1) of this subsection, but applied to form a blend of the

1980 CET Table (M) and the 1980 CET Table (F), may, at the option of the company, be substituted for the 1980 CET Table.

(b) The following tables are to [shalt] be considered as the basis for acceptable tables:

(1) 100% male, 0% female for tables to be designated as the "1980 CSO-A" and "1980 CET-A" Tables;

(2) 80% male, 20% female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" Tables;

(3) 60% male, 40% female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" Tables;

(4) 50% male, 50% female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" Tables;

(5) 40% male, 60% female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" Tables;

(6) 20% male, 80% female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" Tables; and

(7) 0% male, 100% female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" Tables.

(c) Values of 1,000 qx for the blended tables as specified in subsection (b)(2) - (6) of this section can be found in "Proceedings of the NAIC," Volume 1, 1984, pages 396 - 400. "Proceedings of the NAIC," Volume 1, 1984, page 457, shows the method by which ten-year select mortality factors may be obtained. The tables specified in subsection (b)(1) of this section are the same as the 1980 CSO Table (M) or the 1980 CET Table (M), as applicable. The tables specified in subsection (b)(7) of this section are the same as the 1980 CSO Table (F) or the 1980 CET Table (F), as applicable. The tables specified in subsection (b)(2) - (6) of this section are adopted herein by reference. Copies of those tables may be obtained by contacting Texas Department [the Staff Actuary Life, State Board] of Insurance, Life and Health Actuarial, MC-LH-ACT, P.O. Box 12030, [444] San Jacinto Street, Austin, Texas 78711-2030 [78786]. The tables in subsection (b)(1) and (7) of this section are already adopted by statutory law under alternate names.

(d) The tables specified in subsection (b)(1) and (7) of this section may not be used with respect to policies issued on or after January 1, 1985, except where the proportion of persons insured is anticipated to be 90% or more of one sex or the other or except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986, must use mortality tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the decision in *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 103 S. Ct. 3492 (1983). This consideration has not been clearly defined by court or legislative action in all jurisdictions, as of the date of promulgation of this section [these sections].

(e) Notwithstanding any other provision of this subchapter [these sections], an insurer may [shalt] not use these blended tables unless the *Norris* decision is known to apply to the policies involved, or unless there exists a bona fide concern on the part of the insurer that the *Norris* decision might reasonably be construed to apply by a court having jurisdiction.

§3.1304. *Alternate Rule.*

(a) In determining minimum cash surrender value and amounts of paid-up nonforfeiture benefits for any policy of insurance on either a male or a female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of former [the] Insurance

Code^[5] Article 3.44a, §8 (recodified in Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057), and before January 1, 2017, for that policy form, in addition to the mortality tables that may be used according to §3.1303 of this title (relating to Standard), the tables in paragraphs (1) and (2) of this subsection may be used. For policies issued on or after January 1, 2017, the valuation manual, adopted under Insurance Code Chapter 425, Subchapter B, provides the tables to be used.^[5]

(1) A [a] mortality table which is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without 10-year select mortality factors, may at the option of the company be substituted for the 1908 CSO Table, with or without 10-year select mortality factors.^[5] and]

(2) A [a] mortality table which is of the same blend as used in paragraph (1) of this subsection but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table or 1980 CET Nonsmoker Mortality Table may, at the option of the company, be substituted for the 1980 CET Table.

(b) The following blended mortality tables are [shall be] considered as the basis for acceptable tables according to subsection (a) of this section:

(1) - (14) (No change.)

(c) The Texas Department [State Board] of Insurance adopts and incorporates into this subchapter by reference the tables to which subsection (b) of this section refers as tables to be used in conjunction with the section adopted under this subchapter. Copies of these tables can be obtained from the Texas Department [Life Actuaries Division, State Board] of Insurance, Life and Health Actuarial, MC-LH-ACT, P.O. Box 12030 [1110 San Jacinto Boulevard], Austin, Texas 78711-2030 [78701-1998].

(d) The tables specified in subsection (b)(1), (7), (8), and (14) of this section may not be used except where the proportion of persons insured is anticipated to be 90% or more of one sex or the other.

(e) Notwithstanding any other provision of this subchapter, an insurer may [shall] not use the blended mortality tables in subsection (b) of this section unless the *Norris* decision is known to apply to the policies involved, or unless there exists a bona fide concern on the part of the insurer that the *Norris* decision might reasonably be construed to apply by a court having jurisdiction.

§3.1305. *Unfair Discrimination.*

It is not a violation of [the] Insurance Code §541.057 [5 Article 21-21, §4(7)(a),] for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis, as permitted by this subchapter.

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 October 19, 2021.

TRD-202104176

Allison Eberhart

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER O. SMOKER-NONSMOKER
COMPOSITE MORTALITY TABLES

28 TAC §3.1403, §3.1404

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter O under Insurance Code §§541.057, 541.401, 1105.055(h), and 36.001.

Insurance Code §541.057 prohibits unfair discrimination in the rates, dividends, or any other contract terms and conditions for individuals of the same class and life expectancy in life insurance and annuity contracts.

Insurance Code §541.401 provides that the Commissioner may adopt and enforce reasonable rules necessary to accomplish the purposes of Chapter 541.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.1403 implements Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057. Section 3.1404 implements Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057 and references Insurance Code §425.067.

§3.1403. *Alternate Tables.*

(a) For any policy of insurance delivered or issued for delivery in this state after the operative date of former [the] Insurance Code^[5] Article 3.44a, §8 (recodified in Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057), for that policy form and before January 1, 1989, at the option of the company and subject to the conditions stated in §3.1404 of this title (relating to Conditions):

(1) - (2) (No change.)

(b) The tables specified in subsection (a) of this section must [shall] be used as described in subsection (a) of this section to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision. Provided, however, that for any category of insurance issued on female lives with minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision determined using 1958 CSO or 1958 CET Smoker and Nonsmoker Mortality Tables, such minimum values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided further that the substitution of the 1958 CSO or CET Smoker and Nonsmoker Mortality Tables is available only if made for each policy of insurance on a policy form delivered or issued for delivery on or after the operative date for that policy form and before a date not later than January 1, 1989.

(c) For any policy of insurance delivered or issued for delivery in this state after the operative date of former [the] Insurance Code[;] Article 3.44a, §8 (recodified in Insurance Code Chapter 1105, Subchapter B, §§1105.051 - 1105.057), for the policy form, at the option of the company and subject to the conditions stated in §3.1404 of this title (relating to Conditions):

(1) - (2) (No change.)

(d) The tables specified in subsection (c) of this section must [shall] be used as provided in subsection (c) of this section to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid up nonforfeiture benefits, or benefits under any extended term insurance provision.

(e) Values of 1,000 qx for the tables specified in this section can be found in "Proceedings of the NAIC," Volume I, 1984, pages 402 - 413. These tables are adopted herein by reference for use in an appropriate manner as described in this subchapter [these sections]. Copies may be obtained by contacting the Texas Department [Staff Actuary Life, State Board] of Insurance, Life and Health Actuarial, MC-LH-ACT, P.O. Box 12030 [440 San Jacinto Street], Austin, Texas 78711-12030 [78786]. These tables are more particularly identified as follows:

(1) - (6) (No change.)

§3.1404. Conditions.

For each plan of insurance with separate rates for smokers and non-smokers, an insurer may:

(1) (No change.)

(2) use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by [the] Insurance Code §425.068 [~~Article 3-28, §10~~], and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision; or

(3) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104177

Allison Eberhart

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER Q. ACTUARIAL OPINION AND MEMORANDUM REGULATION

28 TAC §§3.1601, 3.1602, 3.1605 - 3.1607

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter Q under Insurance Code §§425.054, 425.073, and 36.001.

Insurance Code §425.054 provides that the Commissioner specify by rule the requirements of an actuarial opinion under

§425.064(b), including any matters considered necessary to the opinion's scope.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter Q implements Insurance Code §§425.054 - 425.057.

§3.1601. Purpose.

The purpose of this subchapter is to prescribe guidelines and standards for the activities described in paragraphs (1) - (3) of this section:

(1) the submission of a statement of actuarial opinion in accordance with Insurance Code §425.054 [~~Article 3-28, §2A~~] and for memoranda in support of such opinion;

(2) - (3) (No change.)

§3.1602. Scope and Applicability.

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

(c) This subchapter applies [shall be applicable] to the actuarial opinion for the 2005 valuation through the 2016 valuation. The requirements of the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, apply to actuarial opinions for valuations on or after January 1, 2017 [~~2005 Annual Statement and thereafter~~].

(d) (No change.)

§3.1605. General Requirements.

(a) Submission of statement of actuarial opinion. Any statement of actuarial opinion required by this subchapter must [shall] be submitted in accordance with paragraphs (1) and [-] (2) of this subsection.

(1) - (2) (No change.)

(b) Appointment of actuary. The company must [shall] give the commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm), and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and must [shall] state in the notice that the person is a qualified actuary. Once notice is furnished, no further notice is required with respect to this person, provided that the company gives [shall give] the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements for a qualified actuary. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice must [shall] so state and give the reasons for replacement.

(c) Standards for asset adequacy analysis. The asset adequacy analysis required by this subchapter must:

(1) [shall] conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and any additional standards set forth in this subchapter, which standards are to form the basis of the statement of actuarial opinion in accordance with this subchapter; and

(2) [shall] be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

(d) Liabilities to be covered. The liabilities to be covered will [shall] be in accordance with paragraphs (1) - (3) of this subsection.

(1) Under authority of Insurance Code §425.054 [Article 3-28, §2A], the statement of actuarial opinion applies [shall apply] to all in-force [in force] business on the statement date, whether directly issued or assumed, regardless of when or where issued, for example, annual statement reserves in Exhibits 5, 6, and 7, and claim liabilities in Exhibit 8, Part 1 and equivalent items in the separate account statement or statements.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Insurance Code §§425.064, 425.065, 425.068, and 425.069 [Article 3-28, §§6, 7, 10, and 11], and other applicable Insurance Code provisions, the company must [shall] establish the additional reserve.

(3) Additional reserves established under paragraph (2) of this subsection and deemed not necessary in subsequent years may be released. Any amounts released must [shall] be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

§3.1606. *Statement of Actuarial Opinion Based on an Asset Adequacy Analysis.*

(a) General description. The statement of actuarial opinion required by this section must [shall] consist of the following paragraphs:

(1) (No change.)

(2) a scope paragraph ([] recommended language is provided in subsection (b)(2) of this section) [] identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(3) a reliance paragraph ([] recommended language is provided in subsection (b)(3) of this section) [] describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures, or assumptions [] (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios), supported by a statement of each such expert with the information prescribed by subsection (c) of this section; and

(4) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities ([] recommended language is provided in subsection (b)(6) of this section).

(5) (No change.)

(b) Recommended language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. The language is that which should be included in typical circumstances in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. Regardless of the language used, the opinion must [shall] retain all pertinent aspects of the language provided in this section.

(1) - (6) (No change.)

(c) (No change.)

(d) Adverse opinions. If the appointed actuary is unable to form an opinion, then he or she must [shall] refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse

or qualified, then he or she must [shall] issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) Reliance on information furnished by other persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies must [shall] provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness, or reasonableness, as applicable, of the items. This certification must [shall] include the signature, title, company, address, email address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

(f) Alternate option.

(1) Insurance Code Chapter 425, Subchapter B, [Article 3-28] gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subsection (b)(6) of this section, the commissioner may make one or more of the following additional approaches available to the opining actuary:

(A) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the commissioner chooses to allow this alternative, a formal written list of standards and conditions must [shall] be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year [shall] apply to statements for that calendar year [] and [they shall] remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(B) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met." If the commissioner chooses to allow this alternative, a formal written statement of such allowance must [shall] be issued no later than March 31 of the year it is first effective. It will [shall] remain valid until rescinded or modified by the commissioner. The rescission or modifications must [shall] be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company must [shall] file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request will [shall] be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(C) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have submitted the required comparison as specified by this state."

(i) If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in Figure: 28 TAC §3.1606(f)(1)(C)(ii) [clause (ii) of this paragraph]) for which the required comparison must [shall] be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year [shall] apply to statements for that calendar year []

and [it shall] remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary must [shall] provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under §7.18 of this title (relating to NAIC Accounting Practices and Procedures Manual). Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided must [shall] be at least:

Figure: 28 TAC §3.1606(f)(1)(C)(ii) (No change.)

(iii) The information listed must [shall] include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary must [shall] provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(2) (No change.)

§3.1607. *Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.*

(a) General. Any actuarial memorandum required by the provisions of this subchapter must [shall] be prepared in accordance with and subject to the provisions and qualifications of paragraphs (1) - (5) of this subsection.

(1) In accordance with [the] Insurance Code §§425.054 - 425.057, the appointed actuary must [shall] prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under the opinion. The memorandum must [shall] be made available for examination by the commissioner upon the commissioner's [his or her] request.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of §3.1604 of this title [subchapter] (relating to Definitions), with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board as required by §3.1605 of this title [subchapter] (relating to General Requirements), or the standards and requirements of this subchapter, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review must [shall] be paid by the company but will [shall] be directed and controlled by the commissioner.

(4) The reviewing actuary will [shall] have the same status as an examiner for purposes of obtaining data from the company, and the work papers and documentation of the reviewing actuary will [shall] be retained by the commissioner. The reviewing actuary may [shall] not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer required by this subchapter for any one of the current year or the preceding three years.

(5) In accordance with [the] Insurance Code §§425.054 - 425.057, the appointed actuary must [shall] prepare a regulatory as-

set adequacy issues summary, the contents of which are specified in subsection (c) of this section. Texas domestic companies must [shall] submit the regulatory asset adequacy issues summary by email to ActuarialDivision@tdi.texas.gov or by paper copy to the [Actuarial Division, Financial Program, M.C. 302-3A,] Texas Department of Insurance, Financial Regulation Division, MC-FRD, P.O. Box 12030 [333 Guadalupe, P.O. Box 149104], Austin, Texas 78711-2030 [78714-9104] no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. Nondomestic companies must [shall] submit the regulatory asset adequacy issues summary when requested by the commissioner.

(b) Details of the memorandum section documenting asset adequacy analysis. When an actuarial opinion under §3.1606 of this title [subchapter] (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis) is provided, the memorandum must [shall] demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in §3.1605(c) of this title [subchapter] and any additional standards under this subchapter. The documentation of the assumptions used in paragraphs (1) and (2) of this subsection must [shall] be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. The memorandum must [shall] specify:

(1) - (2) (No change.)

(3) For the analysis basis:

(A) - (B) (No change.)

(C) rationale for degree of rigor in analyzing different blocks of business (including [~~include in the rationale~~] the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(D) criteria for determining asset adequacy (including [~~include in the criteria~~] the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(E) (No change.)

(4) - (6) (No change.)

(c) Details of the regulatory asset adequacy issues summary.

(1) The regulatory asset adequacy issues summary must [shall] include:

(A) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values must [shall] be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(B) - (C) (No change.)

(D) comments on any interim results that may be of significant concern to the appointed actuary. For example, the comments must [shall] describe the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods.

(E) - (F) (No change.)

(2) The regulatory asset adequacy issues summary must [shall] contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and [shall] be signed and dated by the appointed actuary rendering the actuarial opinion.

(3) (No change.)

(d) Conformity to standards of practice. The memorandum must [shall] include a statement with wording substantially similar to that of this subsection as follows: "Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

(e) Use of assets supporting the IMR and the AVR. An appropriate allocation of assets in the amount of the IMR, whether positive or negative, must [shall] be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the AVR; these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR must [shall] be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must [shall] be disclosed in the memorandum.

(f) Documentation retention. The appointed actuary must [shall] retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions, and the results obtained.

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 October 19, 2021.

TRD-202104178
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 5, 2021
For further information, please call: (512) 676-6584



**SUBCHAPTER R. LIFE SETTLEMENT
DIVISION 2. LICENSE APPLICATION
AND RENEWAL; COURSE AND TRAINING
REQUIREMENTS; MAINTENANCE OF
RECORDS**

28 TAC §3.1720

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter R, Division 2, under Insurance Code §1111A.015 and §36.001.

Insurance Code §1111A.015 authorizes the Commissioner to adopt rules to implement Chapter 1111A.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.1720 implements Insurance Code §1111A.003(h).

§3.1720. Forms.

(a) - (c) (No change.)

(d) Biographical Affidavit form. The commissioner adopts by reference the Biographical Affidavit for Life Settlement Providers or Brokers form (revised April 2013) for use as an attachment to the License Application for a Life Settlement Provider or Broker form and as an attachment to the Application for Renewal, Surrender, or Change of Information for a Life Settlement Provider or Broker form, as applicable, for each owner, partner, director, officer, key management personnel, employee having authority to direct the management of the organization, and any person who has ownership of 10% [40 percent] or greater of the applicant or the applicant's stock.

(e) Where to find and send forms. The forms adopted in this section may be [obtained from and] submitted to the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Company Licensing and Registration, MC 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701~~], or obtained at the department's website at www.tdi.texas.gov/forms.

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 October 19, 2021.

TRD-202104179
Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 5, 2021
For further information, please call: (512) 676-6584



**DIVISION 3. FORM FILING AND USAGE
REQUIREMENTS**

28 TAC §3.1740, §3.1742

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter R, Division 3, under Insurance Code §1111A.015 and §36.001.

Insurance Code §1111A.015 authorizes the Commissioner to adopt rules to implement Chapter 1111A.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.1740 implements Insurance Code §1111A.005(a). Section 3.1742 implements Insurance Code §1111A.012.

§3.1740. *Form Filing Requirements and Approval, Disapproval, or Withdrawal of Forms; Fees.*

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

(c) Submission. Licensees must submit one copy of forms as required by this section. Non-electronic filings must be submitted to the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701]. A filing submitted electronically must be submitted through the System for Electronic Rate and Form Filing. A person must hold a life settlement broker's or provider's license issued by the department, have authority to operate as a life settlement broker, or be authorized under subsection (d)(2) of this section to submit forms.

(d) Transmittal checklist requirement. The commissioner adopts by reference the Transmittal Checklist for Life/Health Rate and Form Filings (revised May 2013) to be filed with and attached to forms filed pursuant to subsection (c) of this section. The form may be obtained from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701.] or by accessing the department's website at www.tdi.texas.gov/forms. The transmittal checklist must provide complete and accurate information about the filing, be signed by a duly authorized representative or attorney of the life settlement broker or provider, and include the following information:

(1) - (6) (No change.)

(e) Specific form filing requirements. Forms filed pursuant to this section are subject to the requirements set forth in paragraphs (1) - (3) of this subsection.

(1) Any form filed pursuant to this section must:

(A) prominently display the full name, home office mailing address, and telephone number, and email address, if available, of the life settlement broker or provider;

(B) (No change.)

(C) be submitted on 8-1/2-by-11-inch [8 1/2-by-11-inch] paper or formatted for that size if submitted electronically. The department will not accept bound forms;

(D) - (F) (No change.)

(2) - (3) (No change.)

(f) - (m) (No change.)

(n) Request for hearing. The life settlement broker or provider may make a written request for a hearing to the [Chief Clerk, Mail Code H3-2A,] Texas Department of Insurance, Chief Clerk, MC-GC-CCO, P.O. Box 12030 [149104], Austin, Texas 78711-2030 [78714-9104 or 333 Guadalupe St., Austin, Texas 78701], on receiving notification under subsection (l) of this section of any withdrawal of approval or disapproval of a form by the department.

(o) (No change.)

§3.1742. *Shopper's Guide.*

The commissioner adopts by reference the form Important Information You Should Know Before Entering Into A Life Settlement (revised April 2013), as a shopper's guide for delivery to owners during

the solicitation process. The life settlement broker, or the provider if the transaction does not have a broker, must deliver the guide to the owner prior to the execution of the life settlement contract. The form is available from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701], or by accessing the department's website at www.tdi.texas.gov/forms. The delivery of the shopper's guide satisfies only the requirements of Insurance Code §1111A.012(10)[5] and this section.

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104180

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



DIVISION 4. ANNUAL REPORTING

28 TAC §3.1760

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter R, Division 4, under Insurance Code §1111A.015 and §36.001.

Insurance Code §1111A.015 authorizes the Commissioner to adopt rules to implement Chapter 1111A.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.1760 implements Insurance Code §1111A.006.

§3.1760. *Reporting Requirements.*

(a) (No change.)

(b) Report requirements. The commissioner adopts by reference the Life Settlement Provider Data Report form (revised March 2013), to be filed pursuant to subsection (a) of this section. The form is available from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Rate and Form Review Office, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe St., Austin, Texas 78701], or by accessing the department's website at www.tdi.texas.gov/forms. The report must include the following:

(1) - (3) (No change.)

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104181

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER S. MINIMUM STANDARDS AND BENEFITS AND READABILITY FOR INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICIES

28 TAC §§3.3001, 3.3009, 3.3010, 3.3038, 3.3039, 3.3052, 3.3057, 3.3070, 3.3092, 3.3100, 3.3101, 3.3110

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter S under Insurance Code §§1201.006, 1202.051, and 36.001.

Insurance Code §1201.006 authorizes the Commissioner to adopt reasonable rules necessary to implement Chapter 1201.

Insurance Code §1202.051 provides that the Commissioner adopt rules necessary to implement §1202.051 and meet the minimum requirements of federal law.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter S implements Insurance Code Chapter 1201.

§3.3001. *Applicability and Scope.*

(a) Unless otherwise specified, this subchapter applies [these sections apply] to all individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations, delivered, issued for delivery, or renewed in this state on and after the effective date of this section [hereof], except they do not apply to [] individual [Individual] policies or contracts issued pursuant to a conversion privilege under a policy or contract of group insurance; individual policies issued pursuant to a conversion privilege under an individual policy delivered or issued for delivery in this state prior to January 1, 1978; policies issued to employees or members as additions to franchise plans in existence on January 26, 1977; or credit accident and sickness insurance policies written under [the] Insurance Code Chapter 1153. Individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations, delivered, issued for delivery, or renewed in this state prior to the effective date of this section are subject to the regulations in effect at the time the policy or contract was delivered, issued for delivery, or renewed. [] Article 3.53.

(b) The requirements contained in this subchapter [these sections] are in addition to any other applicable regulations previously adopted; however, this subchapter governs [these sections govern] wherein any conflict or difference exists. The provisions of applicable statutes govern where ambiguity or difference exists between this subchapter [these sections] and such statutes.

§3.3009. *Policy Definitions of Sickness.*

Except as provided in this subchapter [these sections], the definition of "sickness" may not be more restrictive than the following: Sickness means illness or disease of an insured person which first manifested itself after the effective date of insurance and while the insurance is in force. A definition of sickness which anticipates the exclusion of coverage of pre-existing conditions subject to the limitations expressed in [the] Insurance Code §1201.208 [] Article 3.70-3(A)(2), may not use the phrase "the cause of which originates" or any similar phrase. The definition may be modified to exclude sickness or disease for which benefits are provided under any workmen's compensation, occupational disease, employer's liability, or similar statute.

§3.3010. *Policy Definition of Physician.*

This term may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept to the extent of its obligation under the contract all providers of medical care and treatment when such services are within the scope of the providers' licensed authority and are provided pursuant to applicable laws. This definition may not be construed so as to be in conflict with [the] Insurance Code §1451.001 [] Article 3.70-2(B).

§3.3038. *Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions.*

(a) Except as provided by subsection (c) of this section, all individual hospital, medical or surgical coverage (as defined in §3.3002(b)(12) of this title (relating to Definitions)) must [shall] be renewed or continued in force at the option of the insured.

(b) (No change.)

(c) Individual hospital, medical or surgical coverage may only be discontinued or nonrenewed based on one or more of the following circumstances:

(1) - (3) (No change.)

(4) in regards only to coverage offered by an issuer under [the] Insurance Code [] Chapter 842 [20], the insured no longer resides, lives, or works in the service area of the issuer, or area for which the issuer is authorized to do business, but only if coverage is terminated uniformly without regard to any health-status-related [health status related] factor of covered individuals.

(d) - (g) (No change.)

(h) Nothing in this section may [shall] be interpreted as prohibiting an insurer from making policy modifications mandated by state law, or, acting consistently with §3.3040(b) of this title (relating to Prohibited Policy Provisions), from honoring requests from a policyholder for modifications to an individual policy or offering policy modifications uniformly to all insureds under a particular policy form.

§3.3039. *Other Mandatory Policy Provisions.*

(a) Each individual policy of accident and sickness insurance, including a policy issued by a company subject to [the] Insurance Code [] Chapter 842 [20], that is delivered, issued for delivery, or renewed in Texas on or after January 1, 1988, must contain a benefit provision which states, "All benefits payable under this policy on behalf of a dependent child insured by this policy for which benefits for financial and medical assistance are being provided by the Texas Health and [Department of] Human Services Commission will [shall] be paid to the Texas Health and Human Services Commission [said department]" whenever:

(1) the Texas Health and [Department of] Human Services Commission is paying benefits under [the] Human Resources Code [] Chapter 31 or Chapter 32, i.e., financial and medical assistance service programs administered pursuant to the Human Resources Code; and

(2) (No change.)

(b) The insurer or group nonprofit hospital service company must receive at its home office, written notice affixed to the insurance claim when the claim is first submitted, and the notice must state that all benefits paid pursuant to this section must be paid directly to the Texas Health and [Department of] Human Services Commission.

(c) With respect to any policy forms approved by the Texas Department [State Board] of Insurance prior to January 1, 1988, an insurer is authorized to achieve compliance with this section by the use of endorsements or riders, provided such endorsements or riders are approved by the Texas Department [State Board] of Insurance as being in compliance with this section and the provisions of the Insurance Code.

§3.3052. *Standards for Termination of Insurance Provision.*

(a) A policy subject to this subchapter must [shall] include termination provisions that [which shall] specify as to each eligible family member, as set out in §3.3051 of this title (relating to Initial and Subsequent Conditions of Eligibility Provision), the age, or event, if any, upon which coverage under the policy will terminate.

(b) In regard [regards] to individual hospital, medical or surgical coverage, a policy may [shall] only contain the following bases for termination of coverage:

(1) (No change.)

(2) in regard [regards] to policies covering a spouse of the primary insured or dependents:

(A) (No change.)

(B) Coverage of a dependent may terminate upon the dependent's attainment of a limiting age, subject to [this section, Article 3.70-2(C),] Insurance Code §1201.059, this section [(Form of Policy)], and other applicable law.

(c) A policy containing noncancellable, guaranteed renewable or limited guarantee of renewability provisions may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium. The provision must [shall] stipulate that in the event of the insured's death the spouse of the insured, if covered under the policy, will [shall] become the insured.

(d) The provision must [shall] stipulate that if the insurer accepts premium for coverage extending beyond the date, age, or event specified for termination as to an insured family member, then coverage as to such person will [shall] continue during the period for which an identifiable premium was accepted, except where such acceptance was predicated on a misstatement of age outlined in [the] Insurance Code §1201.011 [, Article 3.70-7].

(e) In the event of cancellation by the insurer or refusal to renew by the insurer of a policy providing pregnancy benefits, the provision must [shall] provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy continued in force.

(f) The provision must [shall] stipulate that termination of the policy by the insurer will [shall] be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured person limited to the duration of the policy benefit period, payment of the maximum benefits or to a time period of not less than three months.

(g) (No change.)

(h) A policy may not provide for termination of coverage of a dependent child on attainment of the limiting age for dependent children specified in the policy while the child is:

(1) (No change.)

(2) chiefly dependent upon the insured for support and maintenance. Proof of the incapacity and dependency must [shall] be furnished to the insurer by the insured within 31 days of the child's attainment of the limiting age and subsequently as may be required but not more frequently than annually after the two-year period following the child's attainment of the limiting age. Upon the attainment of the limiting age, the applicable adult premium may be charged.

§3.3057. *Standards for Exceptions, Exclusions, and Reductions Provision.*

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

(c) Exceptions, exclusions, and reductions must be clearly expressed as a part of the benefit provision to which such applies or, if applicable to more than one benefit provision, must [shall] be set forth as a separate provision and appropriately captioned. Policies containing the specified exclusionary subjects appearing in Exhibit A will be acceptable; however, this may not preclude the consideration or approval of other exceptions or exclusions if such are deemed reasonable and appropriate to the risk undertaken and are approved by the commissioner. Exhibit A is adopted herein by reference. Copies of Exhibit A may be obtained by contacting the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030, or by accessing the department's website at www.tdi.texas.gov/forms [Policy Approval Section, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786].

(d) (No change.)

(e) If a policy contains a military service exclusion or a provision suspending coverage during military service, and if the premiums are either reduced or refunded for the period of such military service, such must [shall] be clearly stated in the policy.

(1) As to coverage that is not noncancellable, subject to limited renewability at option of the insured or subject to a limited guarantee of renewability:

(A) if the policy contains a "status" type of exclusion which excludes all coverages applicable to an insured person while in military service on full-time active duty, the policy must [shall] provide, upon receipt of written request, for refund of premiums as applicable to such person on a pro rata [pro-rata] basis;

(B) (No change.)

(C) if a policy contains a provision for voluntary suspension of coverage during military service and an identifiable premium is charged for such coverage upon written request for suspension, a pro rata [pro-rata] premium must be refunded.

(2) (No change.)

§3.3070. *Minimum Standards for Benefits Generally.*

The following minimum standards for benefits are prescribed for the categories noted in §§3.3071 - 3.3077 and §3.3079 of this title (relating to Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies). No individual policy of accident and sickness insurance, or a subscriber contract of a hospital, medical, or dental services corporation, may [shall] be delivered or issued for delivery in this state which does not meet the required minimum standards for the specified categories except as otherwise provided by law or this subchapter [these sections]. Such policies must also meet the requirements of [the] Insurance Code Chapter 1701 [, Article 3.42]. Nothing

in this section will [shall] preclude the issuance of any policy or contract combining two or more of the categories of coverage as set forth in [the] Insurance Code §1201.104 [; Article 3-70-1(F)(1)(a)-(h)].

§3.3092. *Format, Content, and Readability for Outline of Coverage.*

(a) Format.

(1) Each outline of coverage must [shall] contain the appropriate text and be in the appropriate format of the outlines of coverage set forth in this subchapter [these sections] and may not contain any material of an advertising nature, except for the insurer's logotype.

(2) The outline of coverage must [shall] be plainly printed in light-faced type of a style in general use, the size of which must [shall] be uniform except as provided in paragraph (4) of this subsection and not less than 12 point with a lowercase unspaced alphabet length not less than 130 point, with a minimum of one-point [one point] leading.

(3) The contrast and legibility of the color of ink and the color of paper of the outline of coverage must [shall] be substantially the equivalent of that of black ink on white paper.

(4) Text that is capitalized or underscored in the outline of coverage may be of a different style type the size of which may be the same as or larger than that of other text.

(5) When an outline of coverage is integrated with a sales brochure, multi-colored ink may be used on all portions of the brochure except the outline of coverage.

(b) Content.

(1) Drafting instructions for paragraph 1. The following language must [shall] appear in each outline of coverage: READ YOUR POLICY CAREFULLY. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

(2) Drafting instructions for paragraph 2. This paragraph must [shall] be in the applicable form set out in §3.3093 of this title (relating to Prescribed Outlines of Coverage) for the category of coverage provided.

(3) Drafting instructions for paragraph 3. This paragraph must [shall] set forth a brief specific description of the benefits (including dollar amounts and number of days duration where applicable) provided by the policy with which the outline of coverage is to be used. The description must [shall] be stated clearly and concisely, and [shall] include a description of any elimination periods, deductible amounts, inner limits or co-payment requirements, and any other items applicable to the benefits described. If a benefit is stated in the outline of coverage but not provided in the policy as applied for or issued, a notation must [shall] be made in the outline of coverage to the effect that no coverage is provided for that benefit.

(4) Drafting instructions for paragraph 4. This paragraph must [shall] briefly describe any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (3) of this subsection. The circumstances under which any reduction becomes operative must [shall] be included. Limitations on coverage for pre-existing conditions that qualify payment of benefits must [shall] be summarized. Provisions which reduce benefits otherwise payable due to other coverage must [shall] be described.

(5) Drafting instructions for paragraph 5. This paragraph must [shall] include a description of the provisions regarding renewability including any limitation by age, time, or event, status requirements, any reservation by the insurer of a right to change premiums or right of cancellation, and any other matter appropriate to the terms and conditions of renewability. If the policy, or any part of the policy, consists of individual hospital, medical, or surgical coverage, paragraph 5 must [shall] include language regarding guaranteed renewability substantially similar to the following: "This (policy/coverage) is guaranteed renewable. That means that you have the right to keep the policy in force with the same benefits, except that we may discontinue or terminate the policy if: ["1. You fail to pay premiums as required under the policy; ["2. You have performed an act or practice that constitutes fraud, or have made an intentional misrepresentation of material fact, relating in any way to the policy, including claims for benefits under the policy; or ["3. We stop issuing the (policy/coverage) in Texas, but only if we notify you in advance." (Include, if coverage offered by an issuer under the Insurance Code, Chapter 842 [20]: "4. You no longer reside, live, or work in our service area, as described in the policy.") (Include, if applicable: "This policy will not terminate when a covered person becomes eligible for Medicare. However, the policy excludes any benefits that are paid to a covered person by Medicare.") "Unless the policy is 'noncancellable,' as defined in the policy, we have the right to raise rates on your policy at each time of renewal, in a manner consistent with the policy and Texas law. If the policy is noncancellable, our right to raise rates is limited by the definition of 'noncancellable' contained in the policy, and by Texas law."

(6) Drafting instructions for paragraph 6. The total premium payable must [shall] be stated. In the event the mode stated is not an exact multiple of the annual premium, then the annual premium must [shall] also be stated. Initial policy fees must [shall] be stated separately. If premiums are "step-rated," they must [shall] either be disclosed for each step or the initial premium may be disclosed accompanied by a statement as follows: "Renewal premiums for this policy will increase periodically depending upon (your age) (the policy year)." Unless a policy is issued with guaranteed premium rates, this paragraph must contain the statement "premiums are subject to change." This paragraph must [shall] also include a statement of the policy grace period.

(c) Readability.

(1) Insurers must [shall] utilize an appropriate test of readability in gauging the readability of paragraphs 3 through 6 of the Outline of Coverage prescribed in this section and §§3.3090, 3.3091, and [-] 3.3093 of this title (relating to Outline of Coverage Generally; Notice Requirements for Outline of Coverage of Limited Benefit, Supplemental and Non-conventional Coverages; and Prescribed Outlines of Coverage [Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies]). Such test may be selected from any one of the following:

(A) "Flesch" Formula, Rudolf Flesch, *The Art of Readable Writing* (1949, as revised in 1974);

(B) Fry Graph, Edward Fry, *Journal of Reading* (April 1968);

(C) Chall Readability, Jean Chall and Edgar Dale, "A Formula for Predicting Readability"; *Educational Research Bulletin* (January 1948);

(D) FOG Index, Robert Gunning, "The Technique of Clear Writing" and "How to Take the Fog Out of Writing," Dartnell Press;

(E) Farr-Jenkins-Paterson, "Simplification of Flesch Reading Ease Formula," *Journal of Applied Psychology*[5] (October 1951);

(F) any other test which may from time to time be established or approved by the commissioner.

(2) In utilizing a readability test, insurers must [shall] establish a specific minimum level of readability which may not be more difficult than the equivalent of a ninth-grade [ninth grade] reading level. In determining the readability level, all prescribed language, any medical terms, or formal names may be deleted as a criteria of readability.

(3) Each insurer must [shall] notify the commissioner as to the readability test adopted in compliance with this section and any changes made or intended to be made in the use of such text.

(4) The insurer must [shall] file the readability score of the outline of coverage along with the outline of coverage.

(5) This subsection does [shall] not apply to outlines of coverage used in connection with policies providing business buy out agreements or key man coverage.

§3.3100. *Policy Readability Generally.*

(a) In order to increase policyholder understanding of individual accident and sickness policies, insurers are encouraged to draft individual accident and sickness policies in a readable manner. In order not to devalue the policy as a legal document the utmost care and caution must be used in its preparation. [The] Insurance Code Chapter 1201, Subchapter E [; Article 3-70-3(A)], requires the use of certain policy provisions in particular language or provisions not less favorable to the insured or beneficiary than those set forth in said subchapter [article]. The same is true with respect to optional policy provisions as provided in [the] Insurance Code §§1201.219 - 1201.226 [; Article 3-70-3(B)]. Notwithstanding these requirements of law, insurers are urged to experiment with new language in these areas.

(b) Insurers are encouraged to follow the principles set forth in §3.3101 of this title (relating to Organization of Policy Format for Readability) and §3.3102 of this title (relating to Language Readability) when preparing individual accident and sickness policies.

§3.3101. *Organization of Policy Format for Readability.*

(a) The text of the policy must [shall] be organized so that it follows a logical sequence.

(b) Coverages must [shall] be self-contained and independent.

(c) The use of provisions which refer the reader to another section must [shall] be avoided to the extent possible.

(d) General policy provisions applying to all or several like coverages, such as defined words and terms, must [shall] be located in a common area.

(e) Insurers may utilize a separate definition section for words used throughout the policy. If a separate definition section is used, it must [shall] appear early in the policy format.

(f) Nonessential provisions must [shall] be eliminated.

(g) Captions must [shall] be of type size and style to clearly stand out.

(h) Type size and style must [shall] be legible[;] and [shall] comply with the requirements set forth in [the] Insurance Code §1201.054 [; Article 3-70-2(A)(4)].

(i) Ample blank space must [shall] separate the policy provisions.

(j) Ample blank space must [shall] appear between the columns of printing and the border of the paper.

(k) A table of contents or index may be utilized to enable the policyholder to readily locate particular provisions.

§3.3110. *Effective Date; Applicability of Certain Provisions to Policies Deemed Continuous under Insurance Code.*

(a) The sections of this subchapter, as amended and adopted by the commissioner, will [shall] be effective 20 days from the date they are filed with the Office of the Secretary of State and [shall] be applicable to all individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations delivered, issued for delivery, or renewed on and after such date. Individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations, delivered, issued for delivery, or renewed in this state prior to the effective date of this section are subject to the regulations in effect at the time the policy or contract was delivered, issued for delivery, or renewed.

(b) In regard [regards] to policies issued before December 22, 1997, [the effective date of these rules] and deemed continuous and not annually renewed pursuant to [the] Insurance Code §1202.001 [; Article 3-70-13]:

(1) Such policies will [shall] be considered "renewed" for the purposes of complying with the mandatory guaranteed renewability provisions of this subchapter, if applicable to the coverage offered in such policies, as set forth in §3.3020 of this title (relating to Policy Definition of Guaranteed Renewable and Limited Guarantee of Renewability) and §3.3038 of this title (relating to Mandatory Guaranteed Renewability Provisions for Individual Hospital, Medical or Surgical Coverage; Exceptions), on the first policy anniversary date after December 22, 1997 [the effective date of this subchapter].

(2) Such policies will [shall] not be subject to any other provisions of this subchapter, unless the statutory period of continuity prescribed by Insurance Code §1202.001 [Article 3-70-13] ends, and the policy is then renewed. During such period of continuity, the policies will continue to be subject to applicable rules as they existed prior to December 22, 1997 [the effective date of this subchapter].

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 October 19, 2021.

TRD-202104182

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §3.3321

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter T under Insurance Code §1652.005 and §36.001.

Insurance Code §1652.005 provides that the Commissioner adopt rules to implement Chapter 1652.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.3321 implements Insurance Code §1652.102.

§3.3321. *Reporting of Multiple Policies.*

(a) On or before March 1 of every year, every issuer of Medicare supplement coverage in this state must [shall] report the following information to the Texas Department of Insurance for every individual resident of this state for whom the insurer or entity has more than one Medicare supplement policy or certificate in force:

(1) - (2) (No change.)

(b) The items set forth in subsection (a) of this section must [shall] be grouped by individual policyholder and reported on a form substantially similar in layout, design, and wording to the form entitled "Form for Reporting Multiple Medicare Supplement Insurance Policies," which the Texas Department of Insurance adopts and incorporates herein by reference. Copies of this form are available from and on file at the office of the Consumer Protection and Services Program [Division] and reports of multiple Medicare supplement policies should be made to the Texas Department of Insurance, Consumer Protection and Services, MC-CO-CPS [Division, Mail Code 111-1A, Texas Department of Insurance], P.O. Box 12030 [149104], Austin, Texas 78711-2030 [78701-9104].

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 October 19, 2021.

TRD-202104183

Allison Eberhart

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER U. NEWBORN CHILDREN COVERAGE

28 TAC §§3.3401 - 3.3403

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter U under Insurance Code §1367.055 and §36.001.

Insurance Code §1367.055 requires the Commissioner to adopt rules to implement Chapter 1367, Subchapter B.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter U implements Insurance Code §1367.003.

§3.3401. *Purpose.*

The purpose of this subchapter [these sections] is implementation of [the] Insurance Code §1367.003 [Article 3.70-2(E)], so as to clarify

the applicability of §1367.003 [subsection E] to insurance policies to be issued in the future and to existing policies.

§3.3402. *Applicability and Scope.*

This subchapter applies [These sections apply] to all individual or group policies of accident and sickness insurance (including policies issued by companies subject to [the] Insurance Code[;] Chapter 842 [20], as amended) delivered or issued for delivery to any person in this state which provides for either accident and sickness coverage of additional newborn children or for maternity benefits.

§3.3403. *General Rules of Application.*

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

(c) If the policy provides accident and sickness coverage for newborn children, such coverage must [shall] be at least as comprehensive as the coverage provided under the policy for other children for loss as a result of an accident or sickness.

(d) (No change.)

(e) The initial coverage provided newborn children must [shall] continue for a period of at least 31 days. The insurer may require that before the coverage continues [shall continue] beyond this initial 31-day period, the policyholder must notify the insurer of the birth of the newborn child and pay any additional premium required to maintain the coverage in force. Any additional premium required for the initial period of coverage may be charged.

(f) [The] Insurance Code §1367.003 [Article 3.70-2(E);] applies to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in the State of Texas on and after January 1, 1974. The insurer, upon a renewal, extension, or amendment, may charge such additional premiums as are just and reasonable for the additional risk incurred by compliance with [the] Insurance Code §1367.003 [Article 3.70-2(E)]. With respect to any policy forms approved by the Texas Department [State Board] of Insurance prior to the effective date of §1367.003 [Article 3.70-2(E)], an insurer is authorized to achieve compliance with §1367.003 [Article 3.70-2(E)] by the use of endorsements or riders provided such endorsements or riders are approved by the Texas Department [State Board] of Insurance as being in compliance with [the] Insurance Code §1367.003 [Article 3.70-2(E);] and other provisions of the Texas Insurance Code.

(g) [The] Insurance Code §1367.003 [Article 3.70-2(E);] applies to policies written before January 1, 1974, if and when such a policy is "renewed, extended or amended" after January 1, 1974. If the provisions of a policy written before January 1, 1974, allow the insurer to renegotiate the terms of the policy after January 1, 1974, or allow the insurer to adjust the premiums charged under the policy after January 1, 1974, and if at the time such renegotiation or adjustment could be accomplished and is accomplished, the policy continues in force or a policy with substantially similar coverage is agreed to by the insured and insurer, then the policy will [shall] be said to have been "renewed, extended or amended" for purposes of [the] Insurance Code §1367.003 [Article 3.70-2(E)], and the requirements of §1367.003 will [Article 3.70-2(E) shall] attach to the policy.

(h) [The] Insurance Code §1367.003 [Article 3.70-2(E);] applies to any policy except a "non-cancellable and guaranteed renewable" policy written before January 1, 1974, if such policy is "renewed, extended or amended" or a rate adjustment could be made after January 1, 1974. If a group policy is written in conjunction with a collective bargaining agreement, such policy will [shall] be considered "renewed, extended or amended" upon the expiration of any applicable collective bargaining agreement.

(i) Nothing in this subchapter will [these sections shall] be deemed to extend the provisions of [the] Insurance Code §1367.003

[, Article 3.70-2(E),] to insurance contracts providing benefits only for specified diseases, pure accident policies, disability only policies, or loss of time only policies.

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 October 19, 2021.

TRD-202104184

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER Y. STANDARDS FOR
LONG-TERM CARE INSURANCE,
NON-PARTNERSHIP AND PARTNERSHIP
LONG-TERM CARE INSURANCE COVERAGE
UNDER INDIVIDUAL AND GROUP POLICIES
AND ANNUITY CONTRACTS, AND LIFE
INSURANCE POLICIES THAT PROVIDE
LONG-TERM CARE BENEFITS WITHIN THE
POLICY

DIVISION 2. NON-PARTNERSHIP AND
PARTNERSHIP LONG-TERM CARE
INSURANCE

28 TAC §§3.3829, 3.3832, 3.3837, 3.3842, 3.3849

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter Y, Division 2, under Insurance Code §1651.107 and §36.001.

Insurance Code §1651.107 authorizes the Commissioner to adopt rules as necessary to implement Chapter 1651, Subchapter C.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter Y, Division 2, implements Insurance Code §1651.051 and §1651.005.

§3.3829. *Required Disclosures.*

(a) Required disclosure [Diseløsure] of policy provisions [Policy Provisions].

(1) Long-term care insurance policies and certificates must [shall] contain a renewability provision as required by §3.3822 of this title [subchapter] (relating to Minimum Standard for Renewability of Long-term Care Coverage). Such provision must [shall] be appropriately captioned, [shall] appear on the first page of the policy, and [shall] clearly state the duration, where limited, of renewability and the duration of the coverage for which the policy is issued and for which it may be renewed.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder under a long-term care insurance policy and/or certificate, all riders or endorsements added to a long-term care insurance policy and/or certificate after the date of issue or at reinstatement or renewal, which reduce or eliminate benefits or coverage in the policy and/or certificate, [shall] require a signed acceptance by the policyholder. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits in connection with riders or endorsements, such premium charge must [shall] be set forth in the policy, certificate, rider, or endorsement.

(3) A long-term care insurance policy and certificate which provides for the payment of benefits on standards described as usual and customary, reasonable and customary, or words of similar import, must [shall] include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(4) If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must [shall] appear as a separate paragraph of the policy or certificate and [shall] be labeled as "Preexisting Condition Limitations."

(5) Long-term care insurance applicants [shall] have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates must [shall] have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has [shall have] the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

(6) A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in [the] Insurance Code Chapter 1651 or §3.3824 of this title [subchapter] (relating to Preexisting Conditions Provisions) must [shall] set forth a description of such limitations or conditions in a separate paragraph of the policy or certificate and [shall] label each paragraph "Limitations or Conditions on Eligibility for Benefits."

(7) Long-term care insurance policies and certificates must [shall] appropriately caption and describe the nonforfeiture benefit provision, if elected.

(8) Long-term care insurance policies and certificates must [shall] contain a claim denial provision which is [shall be] appropriately captioned. Such provision must [shall] clearly state that if a claim is denied, the insurer will [shall] make available all information directly relating to such denial within 60 days of the date of a written request by the policyholder or certificate holder, unless such disclosure is prohibited under state or federal law.

(9) A long-term care insurance policy and certificate which includes benefit provisions under §3.3818(b) of this title [subchapter] (relating to Standards for Eligibility for Benefits) must [shall] disclose, within a common location and in equal prominence, a description of all benefit levels payable for the coverage described in §3.3818(b) of this subchapter. Criteria utilized to determine eligibility for benefits must [shall] be disclosed in all long-term care insurance policies and certificates, in the manner prescribed by §3.3818 of this subchapter.

(10) If the insurer intends for a long-term care insurance policy or certificate to be a qualified long-term care insurance contract

as defined by the Internal Revenue Code of 1986, §7702B(b), the policy or certificate must [shall] include disclosure language substantially similar to the following: [-] "This policy is intended to be a qualified long-term care contract as defined by the Internal Revenue Code of 1986, §7702B(b)."

(11) If the insurer does not intend for the policy to be a qualified long-term care insurance contract as defined by the Internal Revenue Code of 1986, §7702B(b), the policy or certificate must [shall] include disclosure language substantially similar to the following: [-] "This policy is not intended to be a qualified long-term care insurance contract. This long-term care insurance policy does not qualify the insured for the favorable tax treatment provided for in the Internal Revenue Code of 1986, §7702B."

(12) A long-term care policy or certificate which provides for increases in rates must [shall] include a provision disclosing that notice of an upcoming premium rate increase will be provided no later than the 45th day preceding the date of the implementation of the rate increase.

(b) Required disclosure [Disclosure] of rating practices [Rating Practices].

(1) Other than non-cancellable policies or certificates, the required disclosures of rating practices set forth in paragraph (2) of this subsection [shall] apply to any long-term care policy or certificate delivered or issued for delivery in this state on or after July 1, 2002, except for certificates issued under a group long-term care policy delivered or issued for delivery in this state and issued to one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations that was in effect on January 1, 2002, in which case this subsection will [shall] apply on the policy anniversary following January 1, 2003.

(2) Insurers must [shall] provide the following information as set forth in this paragraph and Form Number LHL560(LTC) Long-Term Care Insurance Personal Worksheet as specified in Figure: 28 TAC §3.3829(b)(8)(H) and Form Number LHL561(LTC) Long-Term Care Insurance Potential Rate Increase Disclosure Form as specified in Figure: 28 TAC §3.3829(b)(8)(I) to the applicant at the time of application or enrollment or, if the method of application does not allow for delivery at that time, the information must [shall] be provided at the time of delivery of the policy or certificate:

(A) - (C) (No change.)

(D) a general explanation for applying premium rate or rate schedule adjustments that includes [shall include]:

(i) - (ii) (No change.)

(E) (No change.)

(3) - (4) (No change.)

(5) If an acquiring insurer files for a rate increase either on a long-term care policy form acquired from a nonaffiliated insurer, or on a block of policy forms acquired from a nonaffiliated insurer on or before January 1, 2002, or the end of the 24-month period after the date of the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling insurer must [shall] include the disclosure of that rate increase in accordance with paragraph (2)(E) of this subsection.

(6) If the acquiring insurer in paragraph (5) of this subsection files for a subsequent rate increase, even within the 24-month pe-

riod, on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from a nonaffiliated insurer referenced in paragraph (5) of this subsection, the acquiring insurer must [shall] make all disclosures required by paragraphs (2)(E), (3), (4), and (5) of this subsection.

(7) An applicant must [shall] sign an acknowledgement at the time of application that the insurer has made the disclosure(s) required under paragraph (2) of this subsection. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant must [shall] sign no later than at the time of delivery of the policy or certificate.

(8) An insurer must [shall] use the text for Form Number LHL560(LTC) as specified in Figure: 28 TAC §3.3829(b)(8)(H) to comply with the requirements in paragraph (2)(A) and (E) of this subsection and Form Number LHL561(LTC) as specified in Figure: 28 TAC §3.3829(b)(8)(I) to comply with the requirements in paragraph (2)(B), (C), and (D) of this subsection. The effective dates for use of each form are specified in subsection (c) of this section. The following requirements and procedures apply to Form Number LHL560(LTC) and Form Number LHL561(LTC):

(A) - (E) (No change.)

(F) The forms filed pursuant to subparagraph (B) of this paragraph should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104 or 333 Guadalupe, Austin, Texas, 78701].

(G) Persons may obtain the required form by making a request to the Texas Department of Insurance, Life and Health Division, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Life/Health Division, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701], or by accessing the department's website at www.tdi.texas.gov/forms [www.tdi.state.tx.us].

(H) - (I) (No change.)

(9) An insurer must [shall] provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, as applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice must [shall] include the information required by paragraph (2)(B), (C), and (D) of this subsection and Form Number LHL561(LTC) Long-Term Care Insurance Potential Rate Increase Disclosure Form as specified in Figure: 28 TAC §3.3829(b)(8)(I) when the rate increase is implemented. The notice must [shall] comply with the requirements specified in Figure: 28 TAC §3.3829(b)(8)(I).

(c) Effective dates [Dates] for use [Use] of Form Number LHL560(LTC) Long-Term Care Insurance Personal Worksheet, and Form Number LHL561(LTC) Long-Term Care Insurance Potential Rate Increase Disclosure Form.

(1) - (4) (No change.)

§3.3832. *Outline of Coverage.*

(a) An outline of coverage must [shall] be delivered to an applicant for an individual or group long-term care insurance policy or certificate at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose. In the case of agent solicitations, the outline of coverage must [shall] be delivered prior to the presentation of an application or enrollment form. In the case of direct-response solicitations, the outline of coverage must [shall] be delivered in conjunction with any applica-

tion or enrollment form. The outline of coverage must [shall] comply with the following standards and standard format. The contents of the outline of coverage must [shall] include the following prescribed text.

(1) The outline of coverage must [shall] be a freestanding document, in no smaller than 12-point type.

(2) The outline of coverage must [shall] contain no material of an advertising nature.

(3) Text which is capitalized in the standard format outline of coverage must [shall] be capitalized. Text which is underscored in the standard format outline of coverage may be emphasized by bold-facing or by other means which provide prominence equivalent to such underscoring.

(4) (No change.)

(b) The outline of coverage must [shall] be in the following format.

Figure: 28 TAC §3.3832(b) (No change.)

(1) **POLICY DESIGNATION.** This policy is (an individual policy of insurance) (a group policy which was issued in (indicate jurisdiction in which group policy was issued)).

(2) **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of some of the important features of your policy. This is not the insurance contract and only the actual policy provision will control the rights and obligations of the parties to it. The policy itself sets forth in detail those rights and obligations applicable to both you and your insurance company. It is very important, therefore, that you **READ YOUR POLICY OR CERTIFICATE CAREFULLY.**

(3) **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.**

(A) (Provide a brief description of the right to return-"free look" provisions of the policy. State that the person to whom the policy is issued is permitted to return the policy within 30 days (or more, if so provided for in the policy) of its delivery to that person, and that in the instance of such return the premium will [shall] be fully refunded.)

(B) (Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.)

(4) **MEDICARE SUPPLEMENT INSURANCE DISCLAIMER. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the insurance company.

(A) (For agents) Neither (insert company name) nor its agents represent Medicare, the federal government, or any state government.

(B) (For direct response) (insert company name) is not representing Medicare, the federal government, or any state government.

(5) **LONG-TERM CARE COVERAGE.** Long-term care insurance is designed to provide coverage for necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

Coverage is provided for the benefits outlined in paragraph (6) of this subsection. The benefits described in paragraph (6) of this subsection may be limited by the limitations and exclusions in paragraph (7) of this subsection.

(6) **BENEFITS PROVIDED BY THIS POLICY.**

(A) (Describe covered services and benefits, related deductible(s), waiting periods, elimination periods, and benefit maximums.)

(B) (Describe institutional benefits, by skill level.)

(C) (Describe noninstitutional benefits, by skill level.)

(D) **Eligibility for Payment of Benefits (NOTE: This portion of the outline of coverage must include an explanation of any instance in which provision of benefits is predicated upon the insured's having met a specific standard of eligibility for that benefit under the terms of the policy. The procedural requirements must be stated for such screening for the provision of benefits. The inability to perform activities of daily living and the impairment of cognitive ability must [shall] be used to measure an insured's eligibility for long-term care and must be defined and described as part of the outline of coverage in conformance with the provisions of §3.3804 of this title (relating to Definitions). The outline of coverage also must [shall] specify when an attending physician or other specified person must certify that the insured has a certain level of functional dependency in order for the insured to be eligible for benefits. If the policy or certificate contains provisions allowing for additional benefits (such as waiver of premiums, respite care, etc.) upon the occurrence of a certain contingency or contingencies, this paragraph also must [shall] delineate each such benefit and specify the criteria for eligibility for each benefit.**

(7) **LIMITATIONS AND EXCLUSIONS.** (State the principal exclusions, reductions, limitations, restrictions, or other qualifications to the payments of benefits contained in the policy, including:

(A) []preexisting conditions;

(B) []noneligible facilities/providers;

(C) []noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(D) []exclusions/exceptions; and

(E) []limitations.) **THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

(8) **RELATIONSHIP OF COST OF CARE AND BENEFITS.** Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

(A) []that the benefit level will not increase over time;

(B) []any automatic benefit adjustment provisions;

(C) []whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(D) []if such a guarantee is present, whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

(E) []whether any additional premium charge will be imposed, and how that is to be calculated.)

(9) TERMS UNDER WHICH THE (POLICY) (CERTIFICATE) MAY BE CONTINUED IN FORCE AND IS CONTINUED. (For long-term care insurance policies or certificates, describe one of the following permissible policy renewability provisions.)

(A) (Policies and certificates which are guaranteed renewable must [shaH] contain the following statement:)

(i) RENEWABILITY: THIS POLICY (CERTIFICATE) IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy (certificate), to continue this policy as long as you pay your premiums on time. (Company Name) cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(ii) (Policies and certificates that are noncancellable must [shaH] contain the following statement:) RENEWABILITY: THIS POLICY (CERTIFICATE) IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. (Company Name) cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, (Company Name) may increase your premium at that time for those additional benefits.[j]

(B) (for group coverage, a specific description of continuation/ conversion provisions applicable to the certificate and group policy); and

(C) (a description of waiver of premium provisions or a statement that there are no such provisions.)

(10) ALZHEIMER'S DISEASE, OTHER ORGANIC BRAIN DISORDERS, AND BIOLOGICALLY BASED BRAIN DISEASES/SERIOUS MENTAL ILLNESS. (State that the policy provides coverage for insureds who meet the eligibility requirements explained above in paragraph 6 of this subsection because of a clinical diagnosis of Alzheimer's disease or related degenerative illnesses and illnesses involving dementia, or due to biologically based brain diseases/serious mental illnesses, including schizophrenia, paranoid and other psychotic disorders, bipolar disorders (mixed, manic, and depressive); major depressive disorders (single episode or recurrent); and schizo-affective disorders (bipolar or depressive). Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.)

(11) PREMIUM.

(A) (State the total annual premium for the policy. In the event the total premium for the policy is different from the annual premium, then the total premium also must [shaH] be stated. Initial policy fees must [shaH] be stated separately.)

(B) (If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.)

(C) (This paragraph also must [shaH] include a statement of the policy grace period.)

(12) TEXAS DEPARTMENT OF INSURANCE'S CONSUMER HELP LINE. An insurer must [shaH] include notification that the prospective insured may call the Texas Department of Insurance's Consumer Help Line at 1-800-252-3439 for agent, company, and any other insurance information, and 1-800-599-SHOP to order publications related to long-term care coverage, and the Texas Health and Human Services Commission [Department of Aging] at (1-800-252-9240 or current number if different) to receive counseling regarding the purchase of long-term care or other health care coverage.

(13) DENIAL OF APPLICATION. A long-term care insurer must [shaH] state that within 30 days of denial of an application, it will refund any premiums paid by a long-term care applicant.

(14) OFFER OF INFLATION PROTECTION. Insurers must [shaH] include the information set out in subparagraphs (A) and (B) of this paragraph regarding the offer of inflation protection.

(A) A graphic comparison of the benefit levels of a policy and certificate, if applicable, that increases benefits due over the policy interval with a policy that does not increase benefits, depicting benefit levels over at least a 20-year period, must [shaH] be provided.

(B) A disclosure of any expected premium increases or additional premiums to pay for automatic or optional benefit increases must [shaH] be made. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer must [shaH] also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75 and 85 for benefit increases. An insurer may use a reasonable hypothetical or a graphic demonstration for the purposes of this disclosure.

(15) OFFER OF NONFORFEITURE BENEFITS. Insurers must [shaH] include the information set out in subparagraphs (A), (B)₂ and (C) of this paragraph regarding the offer of nonforfeiture benefits.

(A) A complete and clear explanation of each nonforfeiture option being offered, including an actual numerical example. Figure: 28 TAC §3.3832(b)(15)(A) (No change.)

(B) Disclosure of the premium and percentage increase in premium associated with each of the nonforfeiture benefits offered.

(C) Disclosure that if the nonforfeiture offer is rejected that a contingent benefit upon lapse will be provided and a description of such benefit.

(16) DISCLOSURE REGARDING FEDERAL TAX TREATMENT OF LONG-TERM CARE INSURANCE POLICY.

(A) Policies intended to be qualified long-term care insurance policies. Include disclosure language substantially similar to the following: "This policy is intended to be a qualified long-term care contract as defined by the Internal Revenue Code of 1986, §7702B(b). There may be tax consequences associated with the purchase of a qualified long-term care insurance contract, such as the tax deductibility of premiums and the exclusion from taxable income of benefits. The prospective insured is urged to consult with a qualified tax advisor."

(B) Policies which are not intended to be a qualified long-term care insurance contract. Include disclosure language substantially similar to the following: "This policy is not intended to be a qualified long-term care insurance contract as defined by the Internal Revenue Code of 1986, §7702B(b). This policy will not qualify the insured for the favorable tax treatment provided for in the Internal Revenue Code of 1986, §7702B. The prospective insured is urged to consult with a qualified tax advisor." Additionally, the insurer must [shaH] disclose the criteria which result in the policy or certificate not being classified as a qualified long-term care insurance contract.

(17) ADDITIONAL FEATURES.

(A) (Indicate if medical underwriting is used.)

(B) (Describe other important features such as [∓] unintentional lapse as provided by §3.3841 of this title (relating to Unintentional Lapse and Reinstatement [unintentional lapse and reinstatement]).

§3.3837. Reporting Requirements.

(a) Policy or certificate replacements [Certificate Replacements] and lapses [Lapses]. The purpose of this subsection is to specify requirements for insurers issuing long-term care insurance benefits in this state to report to the commissioner information on a statewide basis regarding long-term care insurance policy or certificate replacements and lapses.

(1) Agent records.

(A) Each insurer must [shall] maintain records, for each agent, of that agent's number and dollar amount of replacement sales as a percentage of the agent's total number and amount of annual sales attributable to long-term care products, as well as the number and dollar amount of lapses of long-term care insurance policies sold by the agent and expressed as a percentage of the agent's total annual sales attributable to long-term care products.

(B) (No change.)

(2) Reporting of 10 percent of agents. Each insurer must [shall] report by June 30 of every year the information indicated in the parts of Form Number LHL562(LTC) Long-Term Care Insurance Replacement and Lapse Reporting Form on the listing of the 10 percent of agents data as specified in Figure: 28 TAC §3.3837(a)(2) for the 10 percent of its agents with the greatest percentages of policy or certificate lapses and replacements during the preceding calendar year. Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website. Figure: 28 TAC §3.3837(a)(2) (No change.)

(3) Reporting number of lapsed long-term care policies. Each insurer must [shall] report by June 30 of every year the number of lapsed long-term care policies as a percentage of its total annual sales of such policies and as a percentage of its total number of long-term care policies in force during the preceding calendar year as indicated in the Company Totals part of Form Number LHL562(LTC) Long-Term Care Insurance Replacement and Lapse Reporting Form as specified in Figure: 28 TAC §3.3837(a)(2). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website.

(4) Reporting number of replacement long-term care policies. Each insurer must [shall] report by June 30 of every year the number of replacement long-term care policies sold as a percentage of its total annual sales of such products, and as a percentage of its total number of such policies in force during the preceding calendar year as indicated in the Company Totals part of Form Number LHL562(LTC) Long-Term Care Insurance Replacement and Lapse Reporting Form as specified in Figure: 28 TAC §3.3837(a)(2). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website.

(b) Rescissions. Each insurer issuing long-term care insurance benefits in this state must [shall] maintain a record of all policy, contract, or certificate rescissions relating to such long-term care insurance benefits, both for coverage in this state and nationwide, except for those which the insured voluntarily effectuated, and must [shall] report this data for the preceding calendar year to the commissioner by June 30 of every year as indicated on Form Number LHL563(LTC) Rescission Reporting Form for Long-Term Care Policies as specified in Figure: 28 TAC §3.3837(b). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website. Figure: 28 TAC §3.3837(b) (No change.)

(c) Claims denied [Denied] by class of business [Class of Business].

(1) Definitions. For purposes of this subsection, the following terms [shall] have the following meanings.

(A) - (B) (No change.)

(2) Report of claims denied [Claims Denied]. Each insurer issuing long-term care insurance benefits in this state must [shall] maintain a record by class of business of the number of long-term care claims for long-term care services denied during the preceding calendar year in this state. The insurer must [shall] report the number of claims denied for each class of business expressed as a percentage of claims denied to the commissioner by June 30 of every year as indicated on Form Number LHL564(LTC) Long-Term Care Insurance Claim Denials Reporting Form as specified in Figure: 28 TAC §3.3837(c)(2). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website. Figure: 28 TAC §3.3837(c)(2) (No change.)

(d) Long-Term Care Partnership Program. Each insurer that markets partnership policies in this state must [shall] report to the department by June 30 of each year the information required in §32.107 of the Human Resources Code, specifying the number of approved partnership plans sold in this state during the preceding calendar year and the average age of individuals purchasing approved partnership plans during the preceding calendar year in this state. The information required in this subsection must [shall] be reported in accordance with Form Number LHL565(LTC) Long-Term Care Policies Sold Reporting Form as specified in Figure: 28 TAC §3.3837(e). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website.

(e) Data report [Report] for non-partnership plans [Non-Partnership Plans]. Each insurer that markets long-term care insurance in this state must [shall] report to the department by June 30 of each year the number of non-partnership plans sold in this state during the preceding calendar year and the average age of individuals purchasing such non-partnership plans. The information required in this subsection must [shall] be reported in accordance with Form Number LHL565(LTC) Long-Term Care Policies Sold Reporting Form as specified in Figure: 28 TAC §3.3837(e). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website. Figure: 28 TAC §3.3837(e) (No change.)

(f) Suitability data [Data]. Each insurer issuing long-term care benefits in this state must [shall] report suitability data for this state for the preceding calendar year to the commissioner by June 30 of each year as indicated on Form Number LHL566(LTC) Long-Term Care Suitability Reporting Form as specified in Figure: 28 TAC §3.3837(f)(1). Each insurer must [shall] submit the required information electronically in a format prescribed by the department on the department's website.

(1) Reporting form [Form]. A representation of Form Number LHL566(LTC) Long-Term Care Suitability Reporting Form is as follows: Figure: 28 TAC §3.3837(f)(1) (No change.)

(2) Applicability.

(A) This subsection applies [shall apply] to riders for group and individual annuities and life insurance policies that provide long-term care insurance.

(B) This subsection does [shall] not apply to life insurance policies:

(i) - (iii) (No change.)

(g) Demonstration of compliance with applicable loss ratio standards. Each insurer must [shall] file by June 30 of each year the annual rate filing required by [the] Insurance Code §1651.053(c) to demonstrate compliance with the applicable loss ratios of this state and any other filing requirement adopted by the commissioner relating to loss ratios. The filing must be submitted to the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701]. Such demonstration must [shall] be in addition to any demonstration required under §3.3831(c)(2)(B) - (D) of this title [subchapter] (relating to Standards and Rates) and must [shall] include the following information by calendar duration, separately by form number:

(1) - (7) (No change.)

§3.3842. *Appropriateness of Recommended Purchase.*

(a) In recommending the purchase or replacement of any long-term care insurance policy or certificate, the company and the agent must [shall] make reasonable efforts to determine the appropriateness of the recommended purchase or replacement.

(b) Each insurer, health care service plan, or other entity marketing long-term care insurance (issuer) must [shall]:

(1) - (3) (No change.)

(c) To determine whether the applicant meets the standards developed by the issuer, the agent and issuer must [shall] develop procedures that take the following factors into consideration:

(1) - (3) (No change.)

(d) The issuer and, where an agent is involved, the agent, must [shall] make reasonable efforts to obtain the information set forth in subsection (c) of this section. The efforts must [shall] include presentation to the applicant, at or prior to application, the Form Number LHL560(LTC) Long-Term Care Insurance Personal Worksheet as specified in Figure: 28 TAC §3.3829(b)(8)(H). The issuer may request the applicant to provide additional information to comply with the issuer's suitability standards. The following requirements apply if the issuer requests such additional information on the personal worksheet:

(1) - (2) (No change.)

(3) The filing should be submitted to the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 14904, Austin, Texas, 78714-9104 or 333 Guadalupe, Austin, Texas, 78701].

(e) - (f) (No change.)

(g) The issuer must [shall] use the suitability standards that it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(h) (No change.)

(i) At the same time that the personal worksheet is provided to the applicant, Form Number LHL567(LTC) Things You Should Know Before You Buy Long-Term Care Insurance, containing the text specified in Figure: 28 TAC §3.3842(i)(7) must also be provided to the applicant. The following requirements and procedures apply to this form:

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

(6) If filing the form for review and approval as provided under paragraphs (2) and (3) of this subsection, the insurer must file the form with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas

78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701].

(7) (No change.)

(j) (No change.)

(k) This section and the delivery requirements for the shopper's guide in §3.3840 of this title [subchapter] (relating to Requirements To [to] Deliver Shopper's Guide) [shall] apply to riders for group and individual annuities and life insurance policies that provide long-term care insurance.

(l) This section and the delivery requirements for the shopper's guide in §3.3840 of this title do [subchapter shall] not apply to life insurance policies:

(1) - (3) (No change.)

§3.3849. *Requirements for Insurers that Issue Long-Term Care Policies to Associations and Marketing Standards for Associations that Market the Policies.*

(a) Insurer requirements [Requirements].

(1) Any insurer issuing long-term care insurance to an association, as defined in the Insurance Code §1251.052, must [shall] file with the department in accordance with the requirements and procedures set forth in Subchapter A of this chapter (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) the following:

(A) - (C) (No change.)

(2) (No change.)

(b) Advertisements. Advertisements for long-term care insurance must be filed with the department in accordance with §3.3838(1) of this title [subchapter] (relating to Filing Requirements for Advertising).

(c) Association disclosure requirements [Disclosure Requirements].

(1) (No change.)

(2) If the association and the insurer have interlocking directorates or trustee arrangements, the association must [shall] disclose that fact to its members.

(d) Board approval requirements [Approval Requirements]. The board of directors of associations selling or endorsing long-term care insurance policies or certificates must [shall] review and approve the insurance policies and certificates as well as the compensation arrangements made with the insurer.

(e) Insurer certification form [Certification Form].

(1) The following requirements and procedures apply to Form Number LHL573(LTC) Insurer Certification of Association Compliance With Marketing Standards for Long-Term Care Partnership and Non-Partnership Policies and Certificates Form specified in Figure: 28 TAC §3.3849(e)(1)(F):

(A) - (C) (No change.)

(D) Any reformatted certification form filed pursuant to paragraph (2) of this subsection should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701].

(E) Form Number LHL573(LTC) Insurer Certification of Association Compliance With Marketing Standards for Long-Term Care Partnership and Non-Partnership Policies and Certificates Form may be obtained from the Texas Department of Insurance, Life and Health Division, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Life/Health Division, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701], or from the department's website at www.tdi.texas.gov/forms [www.tdi.state.tx.us].

(F) (No change.)

(2) The initial certification must [shall] be submitted to the department between January 1, 2010₂ and January 31, 2010, for the calendar year 2009, and thereafter must [shall] be submitted annually between January 1 and January 31 for the preceding calendar year.

(3) Form Number LHL573(LTC) is an informational filing pursuant to §3.5(b)(1) of this title [chapter] (relating to Filing Authorities and Categories) and is subject to the requirements and procedures set forth in Subchapter A of this chapter.

(4) The annual completed certification form submitted pursuant to paragraphs (2) and (3) of this subsection should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104 or 333 Guadalupe, Austin, Texas, 78701].

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 October 19, 2021.

TRD-202104185

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



DIVISION 4. PARTNERSHIP LONG-TERM CARE INSURANCE ONLY

28 TAC §§3.3871, 3.3873, 3.3874

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter Y, Division 4, under Insurance Code §§1651.004, 1651.107, and §36.001.

Insurance Code §1651.004 authorizes TDI to adopt reasonable rules necessary and proper to carry out Chapter 1651.

Insurance Code §1651.107 authorizes the Commissioner to adopt rules as necessary to implement Chapter 1651, Subchapter C, relating to the partnership for long-term care program.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter Y, Division 4, implements Insurance Code §1651.051.

§3.3871. *Standards and Reporting Requirements for Approved Long-Term Care Partnership Policies and Certificates.*

(a) Standards.

(1) General requirements. In addition to the required filing and approval pursuant to §3.3873 of this title [subchapter] (relating to Filing Requirements for Long-Term Care Partnership Policies), any policy or certificate marketed or represented to qualify as a long-term care partnership policy or certificate must comply with the following requirements:

(A) (No change.)

(B) the policy is intended to be a qualified long-term care insurance policy under the provisions of §3.3847 of this title [subchapter] (relating to Qualified Long-Term Care Insurance Contracts; [§] Prohibited Representations);

(C) the policy or certificate is issued with and retains inflation coverage that meets the inflation standards specified in §3.3872 of this title [subchapter] (relating to Inflation Protection Requirements for Long-Term Care Partnership Policies and Certificates) based on the insured's then attained age;

(D) (No change.)

(2) Required disclosure notice.

(A) A policy or certificate represented or marketed as a long-term care partnership policy or certificate must [shall] be accompanied by a disclosure notice that explains the benefits associated with the policy or certificate. The required disclosure notice is set forth in Form Number LHL569(LTC) Partnership Status Disclosure Notice for Long-Term Care Partnership Policies/Certificates as specified in Figure: 28 TAC §3.3871(a)(2)(B)(vii).

(B) The following requirements and procedures apply to Form Number LHL569(LTC). [§]

(i) - (v) (No change.)

(vi) Any form filed pursuant to clause (ii) of this subparagraph should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701].

(vii) - (x) (No change.)

(3) Commissioner certification. Under §1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. §1396p(b)(5)(B)(iii)), the Commissioner of Insurance, in implementing the Texas Long-Term Care Partnership Insurance Program ([“]Partnership Program[“]), may certify that long-term care insurance policies and certificates covered under the Partnership Program meet certain consumer protection requirements, and policies so certified are deemed to satisfy such requirements. These consumer protection requirements are set forth in §1917(b)(5)(A) of the Social Security Act and principally include certain specified provisions of the NAIC Long-Term Care Model Act and Model Regulations (adopted as of October 2000). In providing this certification, the commissioner may reasonably rely upon the certification by insurers of the policy forms that is made in accordance Form Number LHL570(LTC) Long-Term Care Partnership Program Insurer Certification Form as specified in Figure: 28 TAC §3.3873(a)(2)(F).

(b) Reporting requirements [Requirements]. In accordance with §1917(b)(1)(C)(iii)(VI) and (v) of the Social Security Act, all issuers of partnership policies or certificates must [shall] provide regular reports to the Secretary of the Department of Health and Human Services (Secretary) in accordance with regulations to be developed

by the Secretary. Such information must [shall] include but not be limited to the following:

(1) - (3) (No change.)

§3.3873. *Filing Requirements for Long-Term Care Partnership Policies.*

(a) Prior approval requirements [Approval Requirements]. Each long-term partnership policy or certificate, including any long-term care partnership endorsement, that is to be delivered or issued for delivery in this state must comply with the requirements specified in paragraphs (1) and (2) of this subsection before being delivered or issued in this state.

(1) (No change.)

(2) Each long-term care partnership policy, certificate, or endorsement filing must include Form Number LHL570(LTC) Long-Term Care Partnership Program Insurer Certification Form, as specified in Figure: 28 TAC §3.3873(a)(2)(F). The following requirements and procedures apply to this certification form:

(A) - (C) (No change.)

(D) Any certification form filed pursuant to subparagraph (B) of this paragraph should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701~~].

(E) Form Number LHL570(LTC) may be obtained from the Texas Department of Insurance, Life and Health Division, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Life/Health Division, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701~~], or from the department's website at www.tdi.texas.gov/forms [~~www.tdi.state.tx.us~~].

(F) (No change.)

(b) Policies not previously approved [Not Previously Approved]. Any policy or certificate, including any endorsement, that has not been previously approved by the commissioner must comply with the requirements specified in paragraphs (1) - (4) of this subsection prior to an insurer offering the policy for sale in Texas as a partnership policy:

(1) - (3) (No change.)

(4) The filing should be submitted to the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104 or 333 Guadalupe, Austin, Texas, 78701~~].

(c) Previously approved policies [Approved Policies]. Insurers requesting to use a previously approved non-partnership policy form as a long-term care partnership policy must comply with the requirements specified in paragraphs (1) - (6) [(1)- (6)] of this subsection prior to offering the policy for sale in Texas as a partnership policy:

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

(6) The filing should be submitted to the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104 or 333 Guadalupe, Austin, Texas, 78701~~].

§3.3874. *Insurer Requirements for Agents That Market Partnership Policies and Certificates.*

(a) Insurer training verification [Training Verification] and certification requirements [Certification Requirements] for agents [Agents]. The following requirements apply to an insurer that is offering partnership policies or certificates in this state.

(1) - (3) (No change.)

(b) Agent training certification form requirements [Training Certification Form Requirements]. The following requirements and procedures apply to Form Number LHL571(LTC) Long-Term Care Partnership Agent Training Certification Initial Reporting Form as specified in Figure: 28 TAC §3.3874(b)(6)(A) and Form Number LHL572(LTC) Long-Term Care Partnership Agent Training Certification Form, as specified in Figure: 28 TAC §3.3874(b)(6)(B):

(1) - (3) (No change.)

(4) Any reformatted certification form filed pursuant to paragraph (2) of this subsection should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701~~].

(5) Form Number LHL571(LTC) and Form Number LHL572(LTC) may be obtained from the Texas Department of Insurance, Life and Health Division, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Life/Health Division, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701~~], or from the department's website at www.tdi.texas.gov/forms [~~www.tdi.state.tx.us~~].

(6) Representations of Form Number LHL571(LTC) Long-Term Care Partnership Agent Training Certification Initial Reporting Form and Form Number LHL572(LTC) Long-Term Care Partnership Agent Training Certification Form are specified in subparagraphs (A) and (B) of this paragraph.

(A) - (B) (No change.)

(c) Agent training certification filing requirements [Training Certification Filing Requirements]. An insurer offering partnership policies or certificates in this state must [shall] submit for the initial certification to the department Form Number LHL571(LTC) Long-Term Care Partnership Agent Training Certification Initial Reporting Form containing the text as specified in Figure: 28 TAC §3.3874(b)(6)(A) and [shall] submit for the subsequent annual certifications to the department Form Number LHL572(LTC) Long-Term Care Partnership Agent Training Certification Form, containing the text as specified in Figure: 28 TAC §3.3874(b)(6)(B), to certify that each individual who sells a long-term care benefit plan for the insurer under the Long-Term Care Partnership Program has completed training and demonstrated evidence of understanding long-term care partnership insurance contracts and how they relate to other public and private coverage of long-term care policies.

(1) (No change.)

(2) Form Number LHL571(LTC) and Form Number LHL572(LTC) are informational filings pursuant to §3.5(b)(1) of this title [chapter] (relating to Filing Authorities and Categories) and are subject to the requirements and procedures set forth in Subchapter A of this chapter.

(3) Any certification form submitted pursuant to this subsection should be filed with the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [~~Filings Intake Division, Mail Code 106-~~

1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104 or 333 Guadalupe, Austin, Texas, 78701].

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 October 19, 2021.

TRD-202104186

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER Z. EXEMPTION FROM REVIEW AND APPROVAL OF CERTAIN LIFE, ACCIDENT, HEALTH AND ANNUITY FORMS AND EXPEDITION OF REVIEW

28 TAC §§3.4001, 3.4002, 3.4004, 3.4005

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter Z under Insurance Code §1701.060 and §36.001.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter Z implements Insurance Code §1701.005(b).

§3.4001. Purpose.

The purpose of this subchapter [these sections] is to exempt certain life and accident and sickness policy forms and annuity contract forms from certain of the requirements of [the] Insurance Code Chapter 1701 [; Article 3.42]. Chapter 1701 [Article 3.42] requires that these forms may not be delivered, issued, or used in Texas unless they have been filed for review for approval with the Texas Department [State Board] of Insurance as provided in §1701.054 [Article 3.42, §(d)]. Insurance Code §1701.005(b) [Article 3.42, §(f)] provides for exemption by the commissioner [board] of policy forms from the requirements of Chapter 1701 [Article 3.42] under certain circumstances. This subchapter exempts [These sections exempt] the forms specified from the requirement that they either be approved before being used or reviewed after being used as provided in §1701.054 [Article 3.42, §(d)(1)]. However, this subchapter does [these sections do] not exempt such forms from the requirement that they be filed before being used. An additional purpose of this subchapter [the sections] is to expedite the review process of forms filed under [the] Insurance Code Chapter 1701 [; Article 3.42].

§3.4002. All Forms To Be Filed for Review Unless Specifically Exempted.

All life and accident and sickness policy forms and annuity contract forms intended for use in this state, including application [forms], rider, or endorsement forms not specifically exempted by this subchapter

[these sections], must be filed to be reviewed and approved in accordance with [the] Insurance Code §1701.051 and §1701.054 [; Article 3.42, §(d)].

§3.4004. Exempt Forms.

(a) Group and individual life forms [Individual Life Forms]. The group and individual life insurance forms specified in this subsection are exempt from the review and approval requirements of [the] Insurance Code Chapter 1701 [; Article 3.42], unless the forms are required by the laws of Texas, another state, or the United States, to be specifically approved or are otherwise excepted in subsection (b) of this section:

(1) group life insurance master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of [the] Insurance Code §§1131.003, 1131.051 - 1131.058, 1131.060, and 1131.064(b) [Article 3.50, §1(1), (2), (3), (4), (5), (6)(b), (7), (7A), (8), (9), and (10)], listed in subparagraphs (A) and (B) of this paragraph:

(A) - (B) (No change.)

(2) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trustee arrangements as defined in Insurance Code §1131.053 [; Article 3.50, §1(5)];

(3) - (6) (No change.)

(b) Exceptions. The provisions of subsection (a)(1) and (2) of this section do [shall] not apply to any group or individual life insurance forms providing the types of coverages set out in paragraphs (1) - (12) of this subsection:

(1) - (7) (No change.)

(8) forms subject to [the] Insurance Code Chapter 1153 [; article 3.53];

(9) - (11) (No change.)

(12) group life master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of Insurance Code §1131.064 [Article 3.50, §1(6)(a)], relating to discretionary groups.

(c) Group and individual annuity forms [Individual Annuity Forms]. The group and individual annuity forms, including applications, specified in paragraphs (1) - (7) of this subsection are exempt from the review and approval requirements of [the] Insurance Code Chapter 1701 [; Article 3.42], unless the forms are required by the laws of Texas, another state, or of the United States to be specifically approved or are otherwise excepted in subsection (d) of this section:

(1) - (2) (No change.)

(3) individual deferred annuities that do not include persistency bonuses or additional interest credits of any type, waiver of surrender charges (except for death, disability or confinement in a hospital or nursing home); two-tier values; or a market value adjustment:

(A) (No change.)

(B) for purposes of this paragraph, and paragraph (4) of this subsection, "two-tier [two tier] values" means values on an annuity available at the maturity date of the contract which are different, depending on whether the value is taken from the contract in a lump sum or left with the issuer for periodic payments, regardless of whether the different values are available at issue or later;

(4) - (7) (No change.)

(d) Exceptions. The provisions of subsection (c) of this section do [shall] not include any of the following annuity forms:

(1) - (2) (No change.)

(3) annuities that contain an equity indexed provision, long-term care or other accident- [accident] and health-related [health related] benefit provision;

(4) applications for use with variable annuities, equity indexed annuities, annuities that contain a market value adjustment provision, long-term care or other accident- [accident] and health-related [health related] provision;

(5) group annuity master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of Insurance Code §1131.064 [Article 3-50, §1(6)(a)], relating to discretionary groups.

(e) Group and individual accident and health forms [Individual Accident and Health Forms]. The group and individual accident and health insurance forms specified in paragraphs (1) - (3) of this subsection are exempt from the review and approval requirements of [the] Insurance Code Chapter 1701 [Article 3-42], unless the forms are required by the laws of Texas, another state, or the United States, to be specifically approved or are otherwise excepted in subsection (f) of this section:

(1) the group and blanket accident and health forms set out in subparagraphs (A) - (D) of this paragraph:

(A) any group accident and health master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto issued under authority of [the] Insurance Code §1251.051 and §1251.052 [Article 3-51-6, §1(a)(1) and (2)]; provided the forms issued under authority of [the] Insurance Code §1251.052 [Article 3-51-6, §1(a)(2)] are exempt only if delivered or issued for delivery to a labor union or organization of labor unions;

(B) any blanket accident and health master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under authority of [the] Insurance Code §§1251.351 - 1251.358 [Article 3-51-6, §2(a)(1)-(8)];

(C) any group master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of [the] Insurance Code §§1251.051, 1251.052, or 1251.053 [Article 3-51-6, §1(a)(1), (2), or (3)] providing Medicare Supplement coverage to an employer, multiple employer arrangement, or a labor union;

(D) any group master policies, contracts, certificates, applications, enrollment forms, riders, amendments, and endorsements applicable thereto, issued under the authority of [the] Insurance Code §1251.051 and §1251.052 [Article 3-51-6, §1(a)(1) or (2)] providing long-term [long term] care coverage to a single employer or a labor union through a policy which is delivered or issued for delivery outside of Texas;

(2) (No change.)

(3) any alternate face pages filed subsequent to the original approval of a policy for use with multiple employer trustee arrangements as defined in Insurance Code §1251.053 [Article 3-51-6, §1(a)(3)].

(f) Exceptions. The provisions of subsection (e) of this section do [shall] not apply to any of the insurance forms set out in paragraphs (1) - (6) [(4)-(6)] of this section.

(1) The provisions of subsection (e)(2) of this section do [shall] not apply to any group or individual health insurance policy which provides, on a comprehensive basis for illness and injury, a com-

bination of hospital, medical, and surgical coverages, including but not limited to any major medical policies and any limited benefit hospital, medical, and surgical policies as defined in §3.3079 of this title (relating to Minimum Standards for Limited Benefit Coverage).

(2) The provisions of subsection (e)(1) and (2) of this section do [shall] not apply to any Medicare supplement policies as defined in [the] Insurance Code Chapter 1652 [Article 3-74], except as specifically provided in subsection (e)(1)(C) of this section.

(3) The provisions of subsection (e)(1) and (2) of this section do [shall] not apply to any long-term [long term] care policies as defined in [the] Insurance Code Chapter 1651 [Article 3-70-12] (including but not limited to any policies providing nursing home or home health care coverages), except as specifically provided in subsection (e)(1)(D) of this section.

(4) The provisions of subsection (e)(1) and (2) of this section do [shall] not apply to any forms which contain preferred provider benefit plan provisions as defined in §§3.3701 - 3.3706 of this title (relating to Preferred Provider Plans).

(5) The provisions of subsection (e)(1) and (2) of this section do [shall] not apply to any group forms which are issued under the authority of Insurance Code §1251.056 [Article 3-51-6, §1(a)(6)] (discretionary groups).

(6) The provisions of subsection (e)(2)(H) of this section do [shall] not apply to any policy subject to the provisions of Subchapter F of this chapter (relating to Group Health Insurance Conversion Privilege), except for policies providing conversion from a policy included as an exempt form in this section.

(g) Copies of previously approved forms [Previously Approved Forms]. Any form not otherwise exempted under this subchapter [these sections] that is an exact copy of a previously approved form is exempt from the review and approval requirements of [the] Insurance Code Chapter 1701 [Article 3-42]. Such forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings [Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities]). The certification form required to be used in filing the certification is "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Insurance Code §1701.052 [Article 3-42(e)], as well as for corrections, resubmissions, substitutions, and filings for forms exempted from review and official action by this subchapter [these sections]. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the Life and Health Division [Life/Health Group], has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in this subchapter [these sections]. The form also is reproduced in full as Figure I in §3.4020 of this title (relating [Relating] to Appendix).

(h) Copies of previously approved forms subsequently submitted in foreign language (non-English) [Previously Approved Forms Subsequently Submitted in Foreign Language (Non-English)]. Any form not otherwise exempted under this subchapter [these sections] that is submitted in Braille as an exact copy of a previously approved form, or any form that has been translated into a foreign language from its previously approved English version, is exempt from the review and approval requirements of [the] Insurance Code Chapter 1701 [Article 3-42]. Such forms must be filed in accordance with and accompanied by the required certification as prescribed in Subchapter A of this chapter. The certification form required to be used in filing the certification is the same as that described in subsection (g) of this section.

§3.4005. *General Information.*

(a) (No change.)

(b) Insurers must [~~shall~~] cause all forms to comply with all required provisions of all applicable law including[,] but not limited to the Insurance Code and the rules and regulations of the department. In addition to other legal requirements:

(1) - (4) (No change.)

(c) Every filing exempted from review by this subchapter ~~must~~ [~~these sections shall~~] be accompanied by each item of information set out in paragraphs (1) - (3) [(1)-(3)] of this subsection.

(1) A signed copy of the certification form which is entitled "TEXAS POLICY FORM CERTIFICATIONS, Multi-Use Form," which also is to be utilized for filing certifications for file-and-use under Insurance Code §1701.052 [~~Article 3.42(e)~~], as well as for corrections, resubmissions, substitutions, and filings for previously approved similar forms. Form "TEXAS POLICY FORM CERTIFICATIONS" is available from the Life and Health Division [~~Life/Health Group~~], has been filed with the Texas Register Division of the Secretary of State for public inspection, and is adopted by reference in this subchapter [~~these sections~~]. The form also is reproduced in full as Figure 1 in §3.4020 of this title (relating [~~Relating~~] to Appendix).

(2) Any additional information or documentation generally required under the provisions of Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings [~~Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities~~]).

(3) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104188

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER AA. LIMITED EXEMPTION FOR INSURANCE COVERAGE FROM THE REQUIREMENTS OF [THE] INSURANCE CODE CHAPTER 1701 [; ARTICLE 3.42]

28 TAC §§3.4101 - 3.4103, 3.4105

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter AA under Insurance Code §1701.060 and §36.001.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter AA implements Insurance Code §1701.055.

§3.4101. *Purpose.*

This subchapter provides [~~These sections provide~~] for exempting certain contracts or coverage from the requirement in [~~the~~] Insurance Code Chapter 1701 [~~; Article 3.42;~~] that such contracts or coverage be filed for review with the Texas Department [~~State Board~~] of Insurance before being delivered, issued, or used in this state; this exemption is applicable only if the coverage is otherwise authorized for use in this state and is appropriate under [~~the~~] Insurance Code Chapter 1701 [~~; Article 3.42;~~] as if no provision for exemption existed. The exemption is for 45 days from the effective date of the coverage or until a later date as provided in this subchapter [~~these sections~~]. The department [~~board~~] has determined that the filing of certain forms or coverage before it goes into effect is not desirable or necessary for the protection of the public, and further that the requirement in [~~the~~] Insurance Code Chapter 1701 [~~; Article 3.42;~~] that such forms be filed for review with the Texas Department [~~State Board~~] of Insurance before being delivered, issued, or used in this state may not practicably be applied to such forms or coverage prior to its issuance or delivery in Texas.

§3.4102. *Coverage Which May Be Exempted.*

The following classes of insurance coverage may be exempted:

(1) group life or accident or health insurance coverage delivered or issued for delivery to the groups authorized by [~~the~~] Insurance Code §§1131.051, 1131.052, 1251.051, and 1251.052 [~~Article 3.50, §1(4) and (2), and Article 3.51-6, §1(a)(1) and (2)~~], insofar as it applies to a labor union as group policyholder if the coverage conforms to the following:

(A) - (B) (No change.)

(C) it is the subject of aggressive and knowledgeable bargaining in a fully arms-length fashion on the part of the policyholder [~~policy holder~~]; and

(D) (No change.)

(2) group life or accident or health insurance coverage delivered or issued for delivery to the groups authorized by [~~the~~] Insurance Code §1131.060 and §1251.052 [~~; Article 3.50, §1(10), and Article 3.51-6, §1(a)(2)~~], if the coverage conforms to the following:

(A) - (D) (No change.)

§3.4103. *Obtaining Exemptions.*

The exemption specified in §3.4102 of this title (relating to Coverage Which May Be Exempted) is conditioned as follows.

(1) The insurer has an affirmative duty to comply with the following:

(A) the insurer must file with the Texas Department [~~State Board~~] of Insurance a statement signed by an officer of the company certifying that each of the conditions specified in either §3.4102(1) or (2) of this title (relating to Coverage Which May Be Exempted) is satisfied, and stating the name of the insured, the nature and extent of benefits, the date the parties concluded the agreement respecting insurance coverage, and the effective date of coverage;

(B) the insurer must inform the group policyholder in writing that the coverage is exempted from review by the Texas Department [~~State Board~~] of Insurance for a limited time;

(C) the insurer must file the statement required by subparagraph (A) of this paragraph and a copy of the communication re-

quired by subparagraph (B) of this paragraph with the Texas Department [State Board] of Insurance by the later of:

(i) - (ii) (No change.)

(D) the insurer must submit the exempted forms for review with the Texas Department [State Board] of Insurance in the usual manner prescribed by [the] Insurance Code Chapter 1701 [Article 3-42], as soon as possible after:

(i) - (ii) (No change.)

(2) (No change.)

§3.4105. *Disciplinary Measures.*

The Texas Department [State Board] of Insurance may at any time revoke the exemption specified in this subchapter [these sections] on the grounds that a company:

(1) has not complied with this subchapter [these sections]; or

(2) by failing to abide by other applicable law is found to be unworthy of the exemption. The department [board] may, after hearing, revoke that company's right to future exemptions under this subchapter [these sections] and may also administer any sanction provided by law.

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 October 19, 2021.

TRD-202104187

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Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER CC. STANDARDS FOR ACCELERATION-OF-LIFE-INSURANCE BENEFITS FOR INDIVIDUAL AND GROUP POLICIES AND RIDERS

28 TAC §3.4317

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter CC under Insurance Code §§1111.053, 1701.060, and 36.001.

Insurance Code §1111.053 provides that the Commissioner may adopt rules to implement Chapter 1111, Subchapter B.

Insurance Code §1701.060 specifies that the Commissioner may adopt rules necessary to implement the purpose of Chapter 1701.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.4317 implements Insurance Code §1111.052.

§3.4317. *Effective Date* [*; Grace Period*].

[(a)] This [Except as otherwise provided in subsection (b) of this section, this] subchapter, as adopted by the commissioner, applies [shall apply] to all life insurance contracts marketed, delivered, issued for delivery, or renewed in Texas on or after the effective date of the subchapter, which will [shall] be 20 days after the date the adopted subchapter is filed with the Office of the Secretary of State.

[(b)] A life insurance contract meeting the requirements of §3.129 of this title (relating to Acceleration of Life Insurance Benefits), as effective until the effective date of this subchapter, and the Insurance Code, Article 3.50-6, as amended effective September 1, 1997, may continue to be marketed, delivered, issued for delivery or renewed in this state during a grace period lasting 90 days after the effective date of this subchapter. An insurer delivering, issuing for delivery or renewing such a life insurance contract during the grace period shall, at the option of the insured, replace the contract with a contract meeting the requirements of this subchapter at the next renewal date of the contract, without regard to the health status or medical history of the insured and without raising the insured's premium based solely on the replacement.]

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 October 19, 2021.

TRD-202104189

Allison Eberhart

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER EE. VALUATION OF LIFE INSURANCE POLICIES

28 TAC §3.4503, §3.4506

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter EE under Insurance Code §§425.058(c)(3), 425.073, and 36.001.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard values under Chapter 425, Subchapter B.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.4506 implements Insurance Code §425.058(c)(3).

§3.4503. *Applicability.*

This subchapter applies [shall apply] to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2000, and before January 1, 2017 [the effective date of this subchapter], subject to the following exceptions in paragraph (1) of this section and conditions in paragraph (2) of this section. For all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2017, the requirements of the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, apply.

(1) - (2) (No change.)

§3.4506. *Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies).*

(a) Basic reserves [Reserves]. Basic reserves must [shall] be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy must use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either one of the two adjustments described in paragraphs (1) or (2) of this subsection may be made.

(1) - (2) (No change.)

(b) Deficiency reserves [Reserves].

(1) The deficiency reserve at any duration must [shall] be calculated:

(A) - (C) (No change.)

(2) This subsection applies [shall apply] to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality specified in §3.4505(b) of this title (relating [Relating] to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) and rate of interest.

(3) Deficiency reserves, if any, must [shall] be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in §3.4505(b) of this title (relating [Relating] to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves).

(4) (No change.)

(c) Minimum value [Value]. Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance must use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if the select mortality factors are used, they must [shall] be the ten-year select factors incorporated into Insurance Code Chapter 425, Subchapter B [; Art 3-28]. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

(d) Unusual pattern [Pattern] of guaranteed cash surrender values [Guaranteed Cash Surrender Values].

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first un-

usual guaranteed cash surrender value must [shall] not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value must [shall] not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where:

(A) - (C) (No change.)

(e) Optional exemption [Exemption] for yearly renewable term [Yearly Renewable Term] (YRT) reinsurance [Reinsurance]. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) (No change.)

(2) Basic reserves must [shall] never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c) of this section.

(3) Deficiency reserves.

(A) (No change.)

(B) Deficiency reserves must [shall] never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A) of this paragraph.

(4) (No change.)

(5) A reinsurance agreement will [shall] be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

(6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit will [shall] be limited to the amount of reserve held by the assuming company for the affected policies.

(f) Optional exemption [Exemption] for attained-age-based yearly renewable term life insurance policies [Attained-Age-Based Yearly Renewable Term Life Insurance Policies]. At the option of the company, the approach described in this subsection for reserves for attained-age-based YRT life insurance policies may be used.

(1) (No change.)

(2) Basic reserves may [shall] never be less than the tabular cost of insurance for the appropriate period, as defined in subsection (c) of this section.

(3) Deficiency reserves.

(A) (No change.)

(B) Deficiency reserves may [shall] never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with subparagraph (A) of this paragraph.

(4) (No change.)

(5) A policy will [shall] be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(A) - (B) (No change.)

(6) - (7) (No change.)

(g) Exemption from unitary reserves for certain n-year renewable term life insurance policies [Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies]. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the conditions described in paragraphs (1) - (3) of this subsection are met.

(1) - (3) (No change.)

(h) Exemption from unitary reserves for certain juvenile policies [Unitary Reserves for Certain Juvenile Policies]. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the conditions described in paragraphs (1) - (3) of this subsection are met, based upon the initial current premium scale at issue.

(1) - (3) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104190

Allison Eberhart

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

DIVISION 1. GENERAL PROVISIONS

28 TAC §3.5002

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter FF, Division 1, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.5002 implements Insurance Code Chapter 1153.

§3.5002. Definitions.

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

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

(6) Case--Either a "single account case" or a "multiple account case" as follows:

(A) Single account case--An account that is at least 25% credible or, at the option of the insurer, any higher percentage as determined by the credibility table set out in §3.5603 of this title [subchapter] (relating to Credibility Table). An insurer exercising this option must in writing notify, and obtain written approval of the commissioner, of the credibility factor it will use to define a "single account case." Once the commissioner is so notified, the credibility

factor will remain in effect for the insurer until a different election has been filed in writing by the insurer and approved by the commissioner.

(B) Multiple account case--A combination of all the insurer's accounts of the same class of business with experience in this state, excluding all single account cases of the insurer defined in subparagraph (A) of this paragraph, [;] or with the approval of the commissioner; [;] "multiple account case" also means two or more accounts of the insurer, having like underwriting characteristics which are combined by the insurer for premium rating purposes, excluding all "single account cases" as defined in subparagraph (A) of this paragraph and other "multiple account cases" defined previously.

(7) - (8) (No change.)

(9) Credibility factor--The degree to which the past experience of a case can be expected to occur in the future. The credibility factor is based either on the average number of life years or the incurred claim count during the experience period as shown in the credibility table set out in §3.5603 of this subchapter. The insurer must [shall] notify the commissioner in writing, and obtain written approval of the commissioner, about which of the two methods it will use in measuring credibility. Once the commissioner is so notified, the method will remain in effect for the insurer until a change has been filed with and approved by the commissioner.

(10) (No change.)

(11) Earned premium at presumptive premium rate--Premium earned during the experience period at the presumptive premium rate set forth in §3.5206 of this title [subchapter] (relating to Presumptive Premium Rates). If the rate for a case is not the presumptive premium rate, premium earned at the presumptive premium rate must be determined in accordance with the conversion method set forth in Form CI-EP-L or Form CI-EP-DIS, as appropriate, provided by the department for that purpose, and set out in an attachment by the insurer to its deviation request form. The forms can be obtained from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104]. The forms can also be obtained from the department's internet website [web site] at www.tdi.texas.gov/forms [www.tdi.state.tx.us].

(12) - (20) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104191

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



DIVISION 2. APPLICATIONS AND POLICIES

28 TAC §3.5103

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter FF, Division 2, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.5103 implements Insurance Code §1153.052.

§3.5103. *Policy Provisions.*

Each individual policy or group certificate of credit life insurance or credit accident and health insurance delivered or issued for delivery in this state must [shall], in addition to the other requirements of law, set forth:

(1) - (4) (No change.)

(5) the effective date of insurance, and the termination date of insurance. The termination date may [shall] not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is an open-end transaction, in lieu of the termination date, the conditions of termination must [shall] be set forth;

(6) - (7) (No change.)

(8) a statement that the benefits, to the extent necessary to extinguish the unpaid amount of the indebtedness, will be paid to the creditor as first beneficiary, and will be applied by the creditor to reduce or extinguish such indebtedness; and a statement that wherever the insurance benefits may exceed the amount necessary to extinguish the indebtedness, any such excess must [shall] be paid by separate check or draft of the insurer to the insured debtor, if then living; otherwise, to a second beneficiary named by the debtor, or a second insured debtor or, in the absence of such designation, to the surviving spouse or to the debtor's estate;

(9) a statement indicating that upon discharge of the indebtedness, the insurance will [shall] be terminated, but without prejudice to any claim originating prior to such termination, and that in all cases of termination prior to scheduled maturity, a refund of any unearned amount of premium paid by or charged to the debtor for insurance will [shall] be made in accordance with the appropriate formula set forth in §3.5901 of this title (relating to Refund of Unearned Premiums) and §3.5906 of this title (relating to Treatment of Partial Months). Such refund must [shall] be paid or credited to the account of the debtor, or paid to the second beneficiary, if the debtor is not living. No such refund is required if the total amount thereof is less than \$3.00. (For insurance coverage subject to Finance Code Chapters 341, 342, and 345 - 348 [Texas Civil Statutes, Article 5069, Chapters 3-6, 6A, 7, and 15], a refund must be made, except that no cash refund will [shall] be required if the amount thereof is less than \$1.00.)

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 October 19, 2021.

TRD-202104192

Allison Eberhart

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584

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DIVISION 4. PRESUMPTIVELY ACCEPTABLE
RELATION OF CREDIT LIFE INSURANCE
BENEFITS TO PREMIUMS

28 TAC §3.5302

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter FF, Division 4, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.5302 implements Insurance Code Chapter 1153.

§3.5302. *Joint Credit Life Insurance.*

(a) Joint lives, for purposes of credit life insurance written under [the] Insurance Code Chapter 1153 [~~Article 3-53~~], mean only spouses or business partners, and such persons must be jointly and severally liable for repayment of the single indebtedness and be joint signers of the instrument of indebtedness. Endorsers and guarantors are not eligible for credit insurance coverage. Joint life coverage may [shall] not be written covering more than two lives. Jointly indebted persons may [shall] not both be covered separately at single life rates.

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104193

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584

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DIVISION 6. DEVIATION PROCEDURES

28 TAC §3.5602, §3.5610

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter FF, Division 6, under Insurance Code §1153.005 and §36.001.

Insurance Code §1153.005 provides that the Commissioner may adopt rules to implement Chapter 1153.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.5602 and §3.5610 implement Insurance Code §1153.105 and §1153.106.

§3.5602. *Request for an Approved Deviated Premium Rate.*

A request for an approved deviated rate must be made in writing and must [shall] include all of the information which is required under this subchapter. It must be accompanied by a list of the creditors whose experience is the basis for such request, and must be attested to by an officer of the insurer. The use of any approved rate deviation approved by the commissioner is limited to those creditors whose names appear on such list. No rate deviation may be used unless and until approved by the commissioner in writing. Any request for an approved deviated rate must [shall] be submitted to the commissioner through the Filings Intake Division in the manner prescribed on Form CI-DRF provided by the department for that purpose. The form can be obtained from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104]. The form can also be obtained from the department's internet website [web site] at www.tdi.texas.gov/forms [www.tdi.state.tx.us]. In order to provide the commissioner sufficient time for review, all requests for approved rate deviations must be submitted a minimum of 60 days prior to the proposed effective date of the approved deviated rate.

§3.5610. *Determination of Approved Deviated Case Rates.*

(a) For cases which are not of credible size, or have no experience, no approved deviation may [shall] be made in the presumptive premium rates under these deviation procedures; except that nothing herein may [shall] be construed as preventing any insurer from filing an automatic deviation pursuant to Insurance Code[;] §1153.105.

(b) For purposes of this section: if the coverage for a single creditor which qualifies as a case has been in force with the insurer for less than the experience period:

(1) the claim experience of the creditor while covered by any prior insurer must [shall] be included to the extent necessary in determining the appropriate case ratios; and

(2) the experience considered in the determination of multiple state case rates must [shall] be Texas experience for the case unless the insurer makes the one-time election to use only nationwide experience. The election to use only nationwide experience must be accompanied by a certification that the insurer uses the same nationwide basis in determining the case ratios in each state in which the case has experience. A grouping of states may be used subject to the same requirements of consistency and certification.

(c) Schedule of new case rates. When submitting a Request for Deviated Rate pursuant to §3.5602 of this title (relating to Request for an Approved Deviated Premium Rate) the insurer must [shall] also file a schedule of new case rates as determined by this section.

(d) Approved deviation request form [~~Deviation Request Form~~]. As required by §3.5602 of this title, any request for approved deviated rates must [shall] be submitted to the commissioner through the Filings Intake Division in the manner prescribed on the form provided by the department for that purpose. The form can be obtained from the Texas Department of Insurance, Life and Health Division, Filings Intake, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Texas Department of Insurance, Filings Intake Division, MC 106-1E, P.O. Box 149104, Austin, Texas 78714-9104]. The form can also be obtained from the department's internet website [web site] at www.tdi.texas.gov/forms [www.tdi.state.tx.us].

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 October 19, 2021.

TRD-202104194

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584

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SUBCHAPTER JJ. 2001 CSO MORTALITY TABLE

28 TAC §§3.9101, 3.9103, 3.9104, 3.9106

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter JJ under Insurance Code §§425.058(c)(3), 425.073, 1105.055(h), and 36.001.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by Commissioner rule for use in determining the minimum standard values under Chapter 425, Subchapter B.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter JJ implements Insurance Code Chapter 425, Subchapter B, §§425.051 - 425.077 and §1105.055.

§3.9101. *Purpose.*

The purpose of this subchapter is to recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Insurance Code §425.058(c)(3) [Articles 3-28 §3(a)(iii)] and §1105.055(h) [3.44a §(8)(e)(6)] and §3.4505 of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves). For policies issued on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, provides applicable mortality tables.

§3.9103. *2001 CSO Mortality Table.*

(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this subchapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after May 1, 2003, and before the date specified in subsection (b) of this section to which Insurance Code §425.058(c)(3) [Articles 3-28 §3(a)(iii)] and §1105.055(h) [3.44a §(8)(e)(6)] and §3.4505 of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) are applicable. If the company elects to use the 2001 CSO Mortality Table, it must [shall] do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this subchapter, the 2001 CSO Mortality Table must [shall] be used in determining minimum standards for policies issued on and after January 1, 2009, and before January 1, 2017, to which Insurance Code §425.058(c) and §1055.055(h) and §3.4505 of this title [chapter] (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) are applicable, except as provided in §§3.9601 - 3.9606 of this title [chapter] (relating to Preneed Life Insurance Minimum Mortality Standards for Determining Reserve Liabilities and Nonforfeiture Values) for preneed life insurance policies and certificates. For policies issued on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, provides applicable mortality tables.

(c) (No change.)

(d) The Commissioner of Insurance adopts by reference the 2001 CSO Mortality Table. The table is available from the Texas Department of Insurance, Financial Regulation Division, Actuarial Office, MC-FRD, P.O. Box 12030, Austin, Texas 78711-2030 [Actuarial Division, Texas Department of Insurance, 333 Guadalupe, Austin, Texas] or on the internet by accessing the department's website at www.tdi.texas.gov/reports/life/ficso.html [www.tdi.state.tx.us/company/ficso.html].

§3.9104. *Conditions.*

(a) For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may use:

(1) (No change.)

(2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Insurance Code §425.068, [Article 3.28 §10] and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits; or

(3) (No change.)

(b) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables must [shall] be used.

(c) (No change.)

§3.9106. *Gender-Blended Tables.*

(a) For any ordinary life insurance policy delivered or issued for delivery in this state on and after May 1, 2003, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection. For any ordinary life insurance policy delivered or issued for delivery in Texas on or after January 1, 2017, the valuation manual adopted under Insurance Code Chapter 425, Subchapter B, provides the applicable mortality tables.

(b) The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002. These blended tables are available from the Texas Department of Insurance, Actuarial Office, Financial Regulation Division, MC-FRD, P.O. Box 12030, Austin, Texas 78711-2030 [Actuarial Division, Texas Department of Insurance,

333 Guadalupe, Austin, Texas] or on the internet by accessing the department's website at www.tdi.texas.gov/reports/life/ficso.html [www.tdi.state.tx.us/company/ficso.html].

(c) It is [shall] not, in and of itself, [be] a violation of Insurance Code Chapter 541 [Article 21.21] for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

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 October 19, 2021.

TRD-202104195

Allison Eberhart

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER KK. EXCLUSIVE PROVIDER BENEFIT PLAN

28 TAC §§3.9202, 3.9203, 3.9206, 3.9211, 3.9212

STATUTORY AUTHORITY. TDI proposes the amendments to Subchapter KK under Insurance Code §845.004 and §36.001, Government Code §533.0025, and Health and Safety Code §62.051.

Insurance Code §845.004 authorizes the Commissioner to adopt rules as necessary to implement the Statewide Rural Health Care System Act.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Government Code §533.0025 provides that the Medicaid managed care delivery system may be accomplished through an exclusive provider organization.

Health and Safety Code §62.051 provides that the Commissioner of the Health and Human Services Commission may delegate to TDI the authority to adopt, with the approval of the commission, any rules necessary to implement the CHIP program.

CROSS-REFERENCE TO STATUTE. Subchapter KK implements Insurance Code §845.004 and Government Code §553.0025.

§3.9202. *Definitions.*

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

(1) - (6) (No change.)

(7) Health care provider--Any person, corporation, facility, or institution licensed by the State of Texas (including physicians^[7] and practitioners listed in Insurance Code Chapter 1451 [Art. 21.52]) to provide health care services.

(8) Health care services--Any episodic or ongoing services such as pharmaceutical, diagnostic, behavioral health, medical, dental

care, or chiropractic in either an inpatient or outpatient setting rendered by a health care provider for the purpose of treating, preventing, alleviating, curing, or healing illness, injury, or disease.

(9) (No change.)

(10) Independent review organization--An entity that is certified by the commissioner to conduct independent review under the authority of Insurance Code Chapter 4202 [Article 21.58C].

(11) - (18) (No change.)

(19) Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(20) Service area--A defined geographic area within which health care services are available and accessible to EPP insureds who live, reside, or work within that geographic area.

(21) (No change.)

(22) Utilization review--A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state. Utilization review will [shall] not include elective requests for clarification of coverage.

§3.9203. Policy and Premium Rates.

(a) Disclosure of complaint system [Complaint System]. An EPP policy or certificate must contain the Complaints and Appeals Process found in this subchapter. This information must include a clear and understandable description of the issuer's methods for resolving complaints. An issuer must provide any subsequent changes to the complaint system to insureds, which it may include in a separate document issued to the insured.

(b) Medically necessary covered services [Necessary Covered Services]. If medically necessary covered services are not available through exclusive providers, the issuer, on the request of an exclusive provider, must [shall] allow referral within a reasonable period to a non-network health care provider and must [shall] fully reimburse the non-network health care provider at the usual and customary or an agreed rate. The policy must provide for a review by a health care provider of the same specialty or a similar specialty as the type of health care provider to whom a referral is requested before the issuer may deny a referral.

(c) Schedule of premiums [Premiums]. An issuer must file the schedule of premium rates and formula or method for calculating the schedule of premium rates for covered health care services along with supporting documentation with the commissioner before it is used in conjunction with any EPP. The issuer must establish the formula or method in accordance with accepted actuarial principles and must produce premium rates that are not excessive, inadequate, or unfairly discriminatory, as well as premium rates that are reasonable with respect to benefits. An issuer may not alter the premium rates resulting from the application of the formula or method for an individual insured based on the status of that insured's health.

(1) - (2) (No change.)

(3) If the formula or method for calculating the schedule of premium rates and the resulting rates are to be continued beyond a one-year period, the issuer must file with the commissioner, no later than [that] the anniversary of the effective date of the original filing, an actuarial statement stating that the issuer has applied the previously filed formula or method consistently, and that the rates charged have proven and are expected to continue to be adequate, not excessive, nor

unfairly discriminatory. The issuer must include with this filing a reconciliation of actual benefits to a schedule of premium rates.

(4) (No change.)

§3.9206. Quality Improvement and Utilization Management.

(a) An issuer must establish and maintain procedures to assure that the health care services provided to insureds are rendered under reasonable standards of quality of care consistent with prevailing professionally recognized [professionally-recognized] standards of medical practice. These procedures must include:

(1) - (2) (No change.)

(3) a record of formal proceedings of quality improvement program activities and a means for maintaining documentation in a confidential manner. Quality improvement program minutes must [shall] be made available to the commissioner;

(4) - (5) (No change.)

(6) a mechanism for making available to the commissioner the clinical records of insureds[?] for examination and review. Such records are confidential and privileged, and are not subject to Government Code, Chapter 552, Public Information, or to subpoena, except to the extent necessary to enable the commissioner to enforce this title [article]; and

(7) (No change.)

(b) An issuer must [shall] establish a mechanism for utilizing independent review organizations as outlined in Insurance Code Chapter 4201 [Article 21.58A].

§3.9211. Filing of Complaints.

Any person, including a person who has attempted to resolve complaints through an issuer complaint system process and who is dissatisfied with the resolution, may report an alleged violation of this subchapter to the Texas Department of Insurance at www.tdi.texas.gov [www.tdi.state.tx.us] or 1-800-252-3439.

§3.9212. Appeal of Non-Medicaid Adverse Determinations.

An issuer must [shall] perform utilization review in compliance with Insurance Code Chapter 4201 [Article 21.58A] and must maintain procedures for notification, review, and appeal of an adverse determination, as defined by this section. An issuer must [shall] implement and maintain an internal appeal system for non-Medicaid adverse determinations that provides reasonable procedures for the resolution of an oral or written appeal initiated by an insured, a person acting on behalf of an insured, or an insured's provider of record concerning dissatisfaction or disagreement with an adverse determination.

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 October 19, 2021.

TRD-202104197

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER MM. PREFERRED MORTALITY TABLES

28 TAC §3.9401, §3.9403

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter MM under Insurance Code §§425.058(c)(3), 425.073, 1105.055(h), and 36.001.

Insurance Code §425.058(c)(3) specifies that for an ordinary life insurance policy issued on the standard basis, to which Chapter 1105, Subchapter B, applies, the applicable table is any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by Commissioner rule for use in determining the minimum standard values under Chapter 425, Subchapter B.

Insurance Code §425.073 requires the Commissioner to adopt by rule a valuation manual and to determine the operative date of the manual.

Insurance Code §1105.055(h) specifies that the Commissioner may adopt by rule any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Subchapter MM implements Insurance Code §425.058.

§3.9401. Purpose.

The purpose of this subchapter is to recognize and permit the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with Insurance Code ~~Article 3.28, §3(a)(iii)~~ (§425.058(c)(3) [effective April 1, 2007]) and §3.4505 of this title (relating to General Calculation Requirements [requirements] for Basic Reserves and Premium Deficiency Reserves). Policies issued on or after January 1, 2017, must follow the applicable mortality table requirements provided by the valuation manual adopted under Insurance Code Chapter 425, Subchapter B.

§3.9403. 2001 CSO Preferred Class Structure Table.

(a) Policies issued on ~~Issued On~~ or after ~~After~~ January 1, 2007, and before January 1, 2017. At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this subchapter, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. Policies issued on or after January 1, 2017, must follow the mortality table requirements provided by the valuation manual adopted under Insurance Code Chapter 425, Subchapter B.

(b) Policies issued on ~~Issued On~~ or after ~~After~~ May 1, 2003, and prior ~~Prior~~ to January 1, 2007. At the election of the insurer and with the consent of the commissioner, for policies issued on or after May 1, 2003, and prior to January 1, 2007, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard subject to the conditions of §3.9404 of this ~~title~~ [subchapter] (relating to Conditions). In determining such consent, the commissioner may rely on the consent of the commissioner of the insurer's state of domicile.

(c) Requirement to make election [Make Election]. No election in subsection (a) or (b) of this section may ~~shall~~ be made until the insurer demonstrates that at least 20% ~~20 percent~~ of the business to be valued on this table is in one or more of the preferred classes.

(d) 2001 CSO Preferred Class Structure Mortality Table Treatment. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this subchapter, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of §§3.9101 - 3.9106 of this ~~title~~ [chapter] (relating to 2001 CSO Mortality Table).

(e) Adoption by reference [Reference]. The commissioner adopts by reference the 2001 CSO Preferred Class Structure Mortality Table. The table is available from the Texas Department of Insurance, Financial Regulation Division, Actuarial Office, MC-FRD, P.O. Box 12030, Austin, Texas 78711-2030 [Actuarial Division, Texas Department of Insurance, Mail Code 302-3A, P.O. Box 149104, Austin, Texas 78714-9104] or on the internet by accessing the department's [Department's] website at www.tdi.texas.gov/reports/life/ficso.html [www.tdi.state.tx.us/company/ficso.html].

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 October 19, 2021.

TRD-202104198

Allison Eberhart

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Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER NN. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

28 TAC §3.9503

STATUTORY AUTHORITY. TDI proposes amendments to Subchapter NN under Insurance Code §§1114.006, 1114.007, and 36.001.

Insurance Code §1114.006 provides that the Commissioner by rule adopt or approve model documents to be used for consumer notices under Chapter 1114.

Insurance Code §1114.007 authorizes the Commissioner to adopt reasonable rules in the manner prescribed by Insurance Code, Chapter 36, Subchapter A, to accomplish and enforce the purpose of Chapter 1114.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9503 implements Insurance Code §1114.006.

§3.9503. *Consumer Notice Content and Format Requirements.*

(a) The text contained in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2) must be in at least 10-point [10 point] type and presented in the same order as indicated in each figure and without any change to the specified text, including bolding effects, except as provided in subsections (b), (c), and (d) of this section.

(b) Pursuant to §3.9506 of this title [subchapter] (relating to Filing Procedures for Substantially Similar Consumer Notices), in lieu of using the notices contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1), an insurer may file a notice with the department that is substantially similar to the text contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) for review and approval by the commissioner. The commissioner will [shall] approve the notice if, in the commissioner's opinion, the notice protects the rights and interests of applicants to at least the same extent as the notices adopted in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). An insurer required to send the notice specified in Figure: 28 TAC §3.9505(2) may not file a notice that is substantially similar to that figure for review and approval by the commissioner.

(c) - (d) (No change.)

(e) The promulgated forms specified in this subchapter are available upon request from the Texas Department of Insurance, Life and Health Division, Life and Health Lines, MC-LH-LHL, P.O. Box 12030, Austin, Texas 78711-2030 [Life, Health & Licensing Division, MC 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701], or by accessing the department website at www.tdi.texas.gov/forms [www.tdi.state.tx.us].

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 October 19, 2021.

TRD-202104199

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. Section 3.9901 implements Insurance Code §425.073.

EXPLANATION. The amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC).

Under Insurance Code §425.073, the Commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commis-

sioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 17, 2021, the NAIC voted to adopt changes to the valuation manual. Fifty-one jurisdictions, representing 92.73% of the relevant direct written premiums, voted in favor of adopting 14 of the Amendment Proposal Forms, which include the following: (1) Amendment 2019-33, (2) Amendment 2020-02, (3) Amendment 2020-03, (4) Amendment 2020-08, (5) Amendment 2020-09, (6) Amendment 2021-10, (7) Amendment 2020-11, (8) Amendment 2020-13, (9) Amendment 2021-03, (10) Amendment 2021-04, (11) Amendment 2021-05, (12) Amendment 2021-06, (13) Amendment 2021-07, and (14) Amendment 2021-09. Forty-eight jurisdictions, representing 87.27% of the relevant direct written premiums, voted in favor of adopting Amendment Proposal Form 2020-10. Both votes adopting changes to the NAIC valuation manual meet the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt it. Additionally, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit the proposed rule because Insurance Code §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by NAIC, and §425.073(c) expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2022 valuation manual includes changes to:

- allow for Principle-Based Reserving (PBR) for life insurers to include a prudent level of future mortality improvement through the use of a scale that would be reviewed and adopted annually by the NAIC's Life Actuarial Task Force;
- modify the Life PBR Exemption to simplify filing requirements and to allow exemption of conversion-only or similar blocks;
- add individually underwritten group life insurance to the scope of Life PBR;
- revise experience reporting requirements to allow for data experience reporting to be performed by a reinsurer or third-party administrator;
- make requirements for materiality and model simplifications more consistent between Variable Annuity PBR and Life PBR; and
- add additional flexibility for mortality aggregation in Life PBR.

The NAIC's adopted changes to the valuation manual can be viewed at content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf. The proposed

amendment to the section is described in the following paragraph.

Section 3.9901. TDI amends §3.9901 by striking the date on which the NAIC adopted its previous valuation manual and inserting the date on which the NAIC adopted its current valuation manual, changing it from August 14, 2020, to August 17, 2021.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by the statute. Ms. Walker made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that the latest version of the NAIC's valuation manual is adopted in TDI's rules, as required by Insurance Code §425.073.

Ms. Walker expects that the proposed amended section will not increase the cost of compliance with Insurance Code §425.073 because the section does not impose requirements beyond those in the statute. Section 425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, any cost associated with adopting the changes to the valuation manual does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the amendment does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons and no additional rule amendments are required.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendment is in effect, the proposed amendment:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 6, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 6, 2021. If TDI holds a public hearing, TDI will consider written comments and those presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073.

§3.9901. *Valuation Manual.*

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 17, 2021 [~~August 14, 2020~~], as required by Insurance Code §425.073.

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 20, 2021.

TRD-202104227

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 676-6584

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS SUBCHAPTER G. DEFINITION OF TERMS

37 TAC §141.111

The Texas Board of Pardons and Paroles proposed amendments to 37 TAC Chapter 141, Subchapter G §141.111, concerning definition of terms. The amendments to §141.111 are proposed to provide edits for clarity, uniformity, and consistency throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036(b) and 508.0441, Government Code. Section 508.036(b) authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441 authorizes the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to parole or mandatory supervision and to act on matters of release to parole or mandatory supervision.

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

§141.111. Definition of Terms.

The following words and terms used within these rules shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Violation of Parole or Mandatory Supervision--A technical violation of parole or mandatory supervision which does not allege criminal conduct.

(2) Affinity (Marriage)--A husband-wife relationship (first degree). By virtue of the marriage, a spouse is also related to individuals related to the other spouse by blood (consanguinity), and the degree of relationship by affinity is the same as the underlying relationship of consanguinity. The ending of a marriage by divorce or death of a spouse ends relationships of affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(3) Board--The Texas Board of Pardons and Paroles, consisting of seven members appointed by the Governor.

(4) Commutation of sentence--An act of clemency by the Governor which serves to modify the conditions of a sentence.

(5) Conditional pardons--A form of executive clemency granted by the Governor which serves to release a person from the conditions of his or her sentence and any disabilities imposed by law thereby, subject to the conditions contained in the clemency proclamation. A person released pursuant to the terms of a conditional pardon is considered, for purposes of revocation thereof, to be a releasee.

(6) Consanguinity--A relationship in which one individual is related to another individual where one is a descendant of the other or where they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. The degree of relationship by consanguinity may be determined by adding the number of generations between an individual and the individual's ancestor or descendant.

(7) Consanguinity within the third degree--An individual's relatives within the third degree by consanguinity are the individual's parent or child (relatives in the first degree); brother, sister, grandparent, or grandchild (relatives in the second degree); and great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of an individual (relatives in the third degree).

(8) CU/FI--Consecutive felony sentence vote that designates the date on which the offender would have been eligible for release on parole if the offender had been sentenced to serve a single sentence. This is not a vote to release on parole.

(9) CU/NR--Consecutive felony sentence vote to deny favorable parole action and set for review on a future specific month and year (set-off).

(10) CU/SA--Consecutive felony sentence vote to deny parole and not release the offender until the serve-all date.

(11) DMS--Mandatory supervision vote to deny release to mandatory supervision and set for review on a future specific month and year (set-off).

(12) Department--The Texas Department of Criminal Justice.

(13) Division--The Parole Division of the Texas Department of Criminal Justice.

(14) Eligible inmate--An offender who has been sentenced to a term of imprisonment in the Texas Department of Criminal Justice Correctional Institutions Division; is confined in a penal or correctional

institution, including a jail or a correctional institution in another state; and is eligible for release on parole.

(15) **Fiduciary**--A person holding a position of trust, who has the duty, created by the undertaking, to act primarily for another's benefit in that undertaking.

(16) **Full Pardon**--An unconditional act of executive clemency by the Governor which serves to release a person from the conditions of his or her sentence and from any disabilities imposed by law thereby.

(17) **Further Investigation (FI)**--An initial determination by a parole panel favorable to parole of an offender, subject to additional investigation and processing.

(18) **Hearing Officer**--A staff member designated by the Board and assigned to conduct a preliminary or revocation hearing concerning one or more allegations of violation of the terms and conditions of parole, mandatory supervision, or conditional pardon; and a sex offender conditions hearing to determine whether the offender constitutes a threat to society by reason of lack of sexual control.

(19) **Initial review**--The review conducted by the Board not later than the 180th day an offender is eligible for release on parole.

(20) **Inmate**--A person incarcerated in the TDCJ-Correctional Institutions Division (CID), other penal institution, or jail serving a sentence imposed upon conviction of a felony.

(21) **Institutional Parole Officer**--A staff member responsible for interviewing offenders and preparing case summaries for review by a parole panel or the Board; and notifying the offender of the releasee decision along with the approval or denial reasons.

(22) **Mandatory supervision**--The non-discretionary release of an offender from incarceration, but not from the legal custody of the state, under such conditions and provisions for supervision as the parole panel may determine. For the purposes of revocation, the terms "parole" and "mandatory supervision" are interchangeable and reference to either one of said terms includes the other.

(23) **Mandatory supervision date**--The date on which the release to mandatory supervision of an eligible offender may occur.

(24) **Offender**--A person incarcerated in the TDCJ-Correctional Institutions Division (CID), other penal institution, or jail serving a sentence imposed upon conviction of a felony or a person released from prison on parole or mandatory supervision.

(25) **Offender's file**--The paper and electronic file maintained by the TDCJ Parole Division as the official custodian of record.

(26) **Pardon**--See the definition of "full pardon" set forth in this section.

(27) **Parole**--The discretionary release of an offender from incarceration, but not from the legal custody of the state, under such conditions and provisions for supervision as a parole panel may determine.

(28) **Parole certificate**--An order of the Board incorporating the terms and conditions of release.

(29) **Parole panel**--A three member decision-making body of the Board authorized to act in release matters. In certain cases, the full Board acts as the parole panel.

(30) **Party**--Each person or agency named or admitted as a party.

(31) **Posthumous**--An event occurring after death.

(32) **Preliminary hearing**--Hearing to determine whether probable cause exists to continue holding the offender in custody pending the outcome of the final hearing.

(33) **Preponderance of the Evidence**--Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not.

(34) **Projected Release Date**--The minimum expiration date as determined by the Texas Department of Criminal Justice.

(35) **Release plan**--Proposed community and place of residence and proposed employment or proposed provision for maintenance and care of the releasee.

(36) **Releasee**--A person released from TDCJ-CID on parole or mandatory supervision.

(37) **Remain Set**--A decision by the Board, after a special review, to continue the initial denial vote set off.

(38) **Remission of fine or forfeiture**--An act of clemency by the Governor releasing a person from payment of all or a portion of a fine or canceling a forfeiture of a bond.

(39) **Reprieve**--A temporary release from the terms of an imposed sentence.

(40) **Review period**--A period in which a parole panel will review an eligible offender for release on parole or mandatory supervision.

(41) **Revocation**--The cancellation of parole, mandatory supervision, or a person granted a conditional pardon to immediate incarceration or recommend to the Governor revocation of a conditional pardon without further hearing or, in the instance of reprieve of a fine, to immediate payment of the fine.

(42) **RMS**--Mandatory supervision vote to release to mandatory supervision when TDCJ-CID determines that the offender has reached the projected release date.

(43) **Serve-All (SA)**--A decision by the Board to deny parole and not release the offender until the serve-all date.

(44) **Serve-All Date**--The projected release date or minimum expiration date as determined by the Texas Department of Criminal Justice.

(45) **SID**--State Identification Number assigned by the Texas Department of Public Safety.

(46) **TDCJ**--Texas Department of Criminal Justice.

(47) **TDCJ-CID**--Texas Department of Criminal Justice-Correctional Institutions Division.

(48) **Treatment**--Refers to rehabilitation programs also referred to as counseling or therapy.

(49) **Trial officials**--The present sheriff, each chief of police, prosecuting attorney, and judge in the county and court of conviction and release.

(50) **Victim**--A person who is the victim of the offense of sexual assault, indecency with a child by contact, continuous sexual abuse of a young child or children, aggravated sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another, as defined in [the Texas Code of Criminal Procedure,] Article 56.01, Sections 2(a) and 3, Code of Criminal Procedure.

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 October 21, 2021.

TRD-202104247

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 406-5478



PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.27

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.27, concerning Reporting Responsibilities of Individuals. Subsection (a)(6) is amended to clarify the distinction between a dishonorable discharge from the armed forces of the United States and a dishonorable discharge from a law enforcement agency. Subsection (b) is amended to reflect the effective date of the changes.

This amendment is necessary to clarify the distinction between a dishonorable discharge from the armed forces of the United States and a dishonorable discharge from a law enforcement agency.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by requiring that a licensee report a dishonorable discharge from the armed forces of the United States.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.153, Reports From Agencies and Schools, Texas Occupations Code §1701.307, Issuance of Officer and County Jailer License, Texas Occupations Code §1701.3075, Qualified Applicant Awaiting Appointment.

No other code, article, or statute is affected by this proposal.

§211.27. *Reporting Responsibilities of Individuals.*

(a) Within thirty days, a licensee or person meeting the requirements of a licensee shall report to the commission:

- (1) any name change;
- (2) a permanent mailing address other than an agency address;
- (3) all subsequent address changes;
- (4) an arrest, charge, or indictment for a criminal offense above the grade of Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, including the name of the arresting agency, the style, court, and cause number of the charge or indictment, if any;
- (5) the final disposition of the criminal action; and

(6) receipt of a dishonorable [~~or other~~] discharge from the armed forces of the United States. [~~based on misconduct which bars future military service.~~]

(b) The effective date of this section is February 1, 2022 [2014].

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 October 20, 2021.

TRD-202104228

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 936-7771



37 TAC §211.30

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §211.30, concerning Chief Administrator Responsibilities for Class A and B Waivers. Subsection (g) is amended to clarify the transferability of a Class A and B waiver.

Subsection (h) is amended to reflect the effective date of the changes.

This amendment is necessary to clarify the transferability of a Class A and B waiver.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarify the transferability of a Class A and B waiver.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

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

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.307, Issuance of Officer or County Jailer License.

No other code, article, or statute is affected by this proposal.

§211.30. *Chief Administrator Responsibilities for Class A and B Waivers.*

(a) A chief administrator may request the executive director that an individual be considered for a waiver of either the enrollment or initial licensure requirements regarding an otherwise disqualifying Class A or B misdemeanor conviction or deferred adjudication. An individual is eligible for one waiver request. This request must be submitted at least 45 days prior to a regularly scheduled commission meeting.

(b) A chief administrator is eligible to apply for a waiver five years after the date of conviction or placement on community supervision.

(c) The request must include:

(1) a complete description of the following mitigating factors:

(A) the applicant's history of compliance with the terms of community supervision;

(B) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(C) the applicant's employment record;

(D) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(E) the required mental state of the disposition offense;

(F) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(G) the type and amount of restitution made by the applicant;

(H) the applicant's prior community service;

(I) the applicant's present value to the community;

(J) the applicant's post-arrest accomplishments;

(K) the applicant's age at the time of arrest; and

(L) the applicant's prior military history;

(2) all court and community supervision documents;

(3) the applicant's statement;

(4) all offense reports;

(5) victim(s) statement(s), if applicable;

(6) letters of recommendation;

(7) statement(s) of how the public or community would benefit; and

(8) chief administrator's written statement of intent to hire the applicant as a full time employee.

(d) Commission staff will review the request and notify the chief administrator if the request is incomplete. The chief administrator must provide any missing documents before the request can be scheduled for a commission meeting. Once a completed request is received, it will be placed on the agenda of a regularly scheduled commission meeting.

(e) The chief administrator will be notified of the meeting date and must be present to present the request to the commissioners. The applicant must be present at the meeting to answer questions about the request. Staff will present a report on the review process.

(f) After hearing the request, the commissioners will make a decision and take formal action to approve or deny the request.

(g) If granted, a waiver is issued in the name of the applicant chief administrator, belongs to the sponsoring agency, is nontransferable without approval, and is without effect upon the subject's separation from employment. If separated and in the event of subsequent prospective law enforcement employment, a person may seek another waiver through the prospective hiring agency's chief administrator.

(h) The effective date of this section is February 1, 2022 [June 1, 2014].

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 October 20, 2021.

TRD-202104230

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 936-7771



CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §217.1, concerning Minimum Standards for Enrollment and Initial Licensure. Subsection (b)(10)(B) is amended based in part to SB 24 and relates to pre employment procedures and requirements of law enforcement agencies. Subsection (b)(13) is amended to clarify the distinction between a dishonorable discharge from the armed forces of the United States and a dishonorable discharge from a law enforcement agency. Subsection (j) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to SB 24 (87R) and clarify the distinction between a dishonorable discharge from the armed forces of the United States and a dishonorable discharge from a law enforcement agency.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public clarifying employment procedures and requirements of law enforcement agencies and requiring that a licensee report a dishonorable discharge from the armed forces of the United States.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.255 Enrollment Qualifications.

No other code, article, or statute is affected by this proposal.

§217.1. Minimum Standards for Enrollment and Initial Licensure.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure.

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement;

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of [a personal history statement that meets or exceeds] the Commission-approved personal history statement; and

(ii) meet all requirements enacted in Occupations Code 1701.451, including submission to the Commission of a form confirming all requirements have been met. An in-person review of personnel records is acceptable in lieu of making the personnel records available electronically if a hiring agency and a previous employing law enforcement agency mutually agree to the in-person review. [contact at least three personal references;]

~~[(iii) contact all employers for at least the last ten years, if applicable;]~~

~~[(iv) contact the chief administrator or the chief administrator's designee at each of the applicant's previous law enforcement employers; and]~~

~~[(v) complete criminal history and driving records checks.]~~

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid

for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code § 501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable discharge from the armed forces of the United States;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

- (A) the current basic peace officer course(s);
- (B) a commission recognized, POST developed, basic law enforcement training course, to include:
 - (i) out of state licensure or certification; and
 - (ii) submission of the current eligibility application and fee; or
- (C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

- (1) 12 months from the original appointment date;
- (2) on leaving the appointing agency; or
- (3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed and expires:

- (1) 12 months from the original appointment date; or
- (2) on completion of training and passing of the jailer licensing examination.

(h) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

- (1) 12 months from the original appointment date; or
- (2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license,

a person is not eligible for a new temporary telecommunicator license for one year.

(i) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(j) The effective date of this section is February 1, ~~2022~~ [2020].

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 October 20, 2021.

TRD-202104232

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 936-7771



CHAPTER 218. CONTINUING EDUCATION

37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §218.3, concerning Legislatively Required Continuing Education for Licensees. Subsection (b)(2) is amended to encompass the requirement of cardiopulmonary resuscitation training for telecommunicators additional pursuant to HB 786 (87R). Subsection (k) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to HB 786 (87R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having telecommunicators trained in cardiopulmonary resuscitation training.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule creates a new regulation;
- (6) the proposed rule expands, limits, or repeals an existing regulation;
- (7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;
- (8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.3071, Issuance of Telecommunicator License, Texas Occupations Code §1701.352, Continuing Education Programs.

No other code, article, or statute is affected by this proposal.

§218.3. *Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years).

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years).

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training.

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable.

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training.

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270), within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065), within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is February 1, 2022 [2020].

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 October 20, 2021.

TRD-202104233

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 936-7771



CHAPTER 219. PRELICENSING, REACTIVATION, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.1, concerning Eligibility to Take State Examinations. Subsection (g) is amended to clarify the status of a license if not appointed within two years from the date of their successful completion of the licensing exam. Subsection (i) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect the status of a license.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will

be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the status of a license.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminates a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule increases or decreases the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.304, Examination.

No other code, article, or statute is affected by this proposal.

§219.1. Eligibility to Take State Examinations.

(a) An individual may not take a licensing exam for a license they actively hold.

(b) To be eligible to take a state licensing exam, an individual must:

(1) have successfully completed a commission-approved basic licensing course or academic alternative program;

(2) meet the requirements for reactivation if the individual is currently licensed;

(3) meet the requirements for reinstatement if the individual is currently licensed;

(4) meet the requirements if an individual is an out of state peace officer, federal criminal investigator, or military; or

(5) be eligible to take the county corrections licensing exam as provided in Texas Occupations Code, Chapter 1701, §1701.310.

(c) To maintain eligibility to attempt a licensing exam the applicant must meet the minimum standards for enrollment and initial licensure.

(d) An eligible examinee will be allowed three attempts to pass the examination. All attempts must be completed within 180 days from the completion date of the licensing course. Any remaining attempts become invalid on the 181st day from the completion date of the licensing course, or if the examinee passes the licensing exam. If an attempt is invalidated for any other reason, that attempt will be counted as one of the three attempts.

(e) The examinee must repeat the basic licensing course for the license sought if:

(1) the examinee fails all three attempts to pass the licensing exam;

(2) the examinee fails to complete all three attempts within 180 days from the completion date of the licensing course; or

(3) the examinee is dismissed from an exam for cheating. If dismissed from an exam for cheating, all remaining attempts are invalidated.

(f) An examinee that is required to repeat a basic licensing course under the provisions in subsection (e) of this section will not be allowed to repeat an academic alternative program.

(g) If an individual is not appointed [~~licensed~~] within 2 years from the date of their successful completion of the licensing exam, the license will be placed in an inactive status. [~~basic licensing course must be repeated~~].

(h) When applicable and in addition to this section, school marshal licenses are subject to the requirements of Chapter 227 of this title.

(i) The effective date of this section is February 1, 2022 [~~2016~~].

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 October 20, 2021.

TRD-202104234

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 936-7771



37 TAC §219.11

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §219.11, concerning Reactivation of a License. Subsection (d) is amended to clarify the reactivation of a license. Subsection (i) is amended to reflect the effective date of the changes.

This amendment is necessary to clarify the process to reactivate a license.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will

be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the reactivation of a license.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule expands, limits, or repeals an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.316, Reactivation of Peace Officer License, Texas Occupations Code §1701.3161, Reactivation of Peace Officer License; Retired Peace Officers.

No other code, article, or statute is affected by this proposal.

§219.11. *Reactivation of a License.*

(a) The commission will place all licenses in an inactive status at the end of the most recent training unit or cycle in which the licensee:

(1) was not appointed at the end of the unit or cycle; and

(2) did not meet continuing education requirements.

(b) The holder of an inactive license is unlicensed for all purposes.

(c) This section includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(d) The requirements to reactivate a license for a peace officer with less than 10 years of full-time service are:

(1) If not appointed within two, but less than five, years from initial licensure:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements, a supplemental peace officer training course, and a skills assessment course;

and
(C) make application and submit any required fee(s);
(D) pass the reactivation exam.

(2) If not appointed within five years of initial licensure:

(A) meet current enrollment standards;
(B) meet current licensing standards;
(C) successfully complete the basic licensing course;
(D) make application and submit any required fee(s);

and

(E) pass the licensing exam.

(3) [(4)] If less than two years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements; and

(C) make application and submit any required fee(s) in the format currently prescribed by the commission.

(4) [(2)] If two years but less than five years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements[,] and[,] if applicable, a supplemental peace officer training course;

and
(C) make application and submit any required fee(s);

(D) pass the licensing exam.

(5) [(3)] If more than five years but less than ten years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements, [and, if applicable,] a supplemental peace officer training course, and a skills assessment course;

and
(C) make application and submit any required fee(s);

(D) pass the licensing exam.

(6) [(4)] Ten years or more from last appointment:

(A) meet current enrollment standards;
(B) meet current licensing standards;
(C) successfully complete the [applicable] basic licensing course;

and
(D) make application and submit any required fee(s);

(E) pass the licensing exam.

(e) The requirements to reactivate a license for a peace officer with 10 years but less than 15 years of full-time service are:

(1) If less than two years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements; and

(C) make application and submit any required fee(s) in the format currently prescribed by the commission.

(2) If two years but less than five years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course;

and
(C) make application and submit any required fee(s);

(D) pass the reactivation exam.

(3) If more than five years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements, and, if applicable, a supplemental peace officer training course and a skills assessment course;

and
(C) make application and submit any required fee(s);

(D) pass the reactivation exam.

(f) Unless exempted by Texas Occupations Code Section 1701.356, the requirements to reactivate a license for an honorably retired peace officer are:

(1) meet current licensing standards;
(2) meet current continuing education requirements; and
(3) make application and submit any required fee(s).

(g) School marshal licenses are subject to the reactivation and renewal procedures related to school marshals under Chapter 227 of this title.

(h) The requirements to reactivate a jailer or telecommunicator license are:

(1) If less than two years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements; and

(C) make application and submit any required fee(s) in the format currently prescribed by the commission.

(2) If two years but less than five years from last appointment:

(A) meet current licensing standards;
(B) successfully complete continuing education requirements;

and
(C) make application and submit any required fee(s);

(D) pass the licensing exam.

(3) If more than five years from last appointment:

(A) meet current licensing standards;

- (B) successfully complete the applicable basic licensing course;
- (C) make application and submit any required fee(s); and
- (D) pass the licensing exam.

(i) The effective date of this section is February 1, 2022 [2020].

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 October 20, 2021.

TRD-202104235
 Kim Vickers
 Executive Director
 Texas Commission on Law Enforcement
 Earliest possible date of adoption: December 5, 2021
 For further information, please call: (512) 936-7771



CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.31

The Texas Commission on Law Enforcement (Commission) proposes the repeal to §221.31, concerning Retired Peace Officer and Federal Law Enforcement Office Firearms Proficiency. This repeal is pursuant to SB 198(87R).

This proposal is necessary to reflect statutory changes pursuant to SB 198(87R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the repeal as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this proposal.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule repeals an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability;

(8) the proposed rule does not positively or adversely affect/s this state's economy.

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The repeal is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§221.31. Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency.

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 October 20, 2021.

TRD-202104236
 Kim Vickers
 Executive Director
 Texas Commission on Law Enforcement
 Earliest possible date of adoption: December 5, 2021
 For further information, please call: (512) 936-7771



CHAPTER 223. ENFORCEMENT

37 TAC §223.19

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §223.19, concerning License Revocation. Subsection (e) is amended to clarify the distinction between a dishonorable discharge from the armed forces of the United States and a dishonorable discharge from a law enforcement agency. Subsection (n) is amended to reflect the effective date of the changes.

This amendment is necessary to clarify the distinction between a dishonorable discharge from the armed forces of the United States and a dishonorable discharge from a law enforcement agency.

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by requiring that a licensee report a dishonorable discharge from the armed forces of the United States.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

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

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§223.19. *License Revocation.*

- (a) The license of a person convicted of a felony shall be immediately revoked.
- (b) The license of a person convicted or placed on community supervision for an offense directly related to the duties and responsibilities of any related office held by that person may be revoked. In determining whether an offense directly relates to such office, the commission will consider:
 - (1) the nature and seriousness of the crime;
 - (2) the relationship of the crime to the purpose for requiring a license for such office;
 - (3) 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
 - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.
- (c) The license of a person convicted or placed on community supervision for any offense involving family violence shall be revoked.
- (d) The license of a person who is noncompliant for the third time in obtaining continuing education shall be revoked.
- (e) The license of a person who has received a dishonorable [or other] discharge from the armed forces of the United States [based on misconduct which bars future military service] shall be revoked.
- (f) The license of a person who has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission may be revoked.

(g) The license of a person who has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile shall be revoked.

(h) Revocation permanently bars the person from any future licensing or certification by the commission.

(i) A revoked license cannot be reinstated unless the licensee provides proof of facts supporting the revocation have been negated, such as:

- (1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;
- (2) the dishonorable or bad conduct discharge has been upgraded to above dishonorable or bad conduct conditions; or
- (3) the report alleged to be false or untruthful was found to be truthful.

(j) During the direct appeal of any appropriate conviction, a license may be revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(k) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.

(l) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(m) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(n) The effective date of this section is February 1, 2022 [2016].

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 October 20, 2021.

TRD-202104239
 Kim Vickers
 Executive Director
 Texas Commission on Law Enforcement
 Earliest possible date of adoption: December 5, 2021
 For further information, please call: (512) 936-7771



CHAPTER 227. SCHOOL MARSHALS

37 TAC §227.7

The Texas Commission on Law Enforcement (Commission) proposes an amendment to §227.7, concerning School Marshal Renewals. Subsection (a) is amended to specify the expiration date of a school marshal license pursuant to SB 785 (87R). Subsection (c) is amended to reflect the effective date of the changes.

This amendment is necessary to reflect statutory changes pursuant to SB 785 (87R).

John Beauchamp, General Counsel, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be little or no effect on state or local governments as a result of administering this amendment.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by specifying the expiration date of a school marshal license.

Mr. Beauchamp has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section. We do not anticipate any costs to micro-businesses and rural communities.

Mr. Beauchamp has determined the following:

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

Comments on the proposal may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

No other code, article, or statute is affected by this proposal.

§227.7. *School Marshal Renewals.*

(a) A school marshal license expires on August 31 [~~the person's birth date~~] following the second anniversary of the date the commission licenses the person. [~~initial licensure or renewal.~~]

(b) The commission may renew the license of a person who has:

- (1) successfully completed a renewal course designed and administered by the commission which will not exceed a combined 16 hours of classroom and simulation training;
- (2) passed a commission exam;
- (3) demonstrated handgun proficiency as required by the commission; and
- (4) demonstrated psychological fitness.

(c) The effective date of this section is February 1, 2022 [2014].

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 October 20, 2021.

TRD-202104240

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 936-7771



PART 16. TEXAS CIVIL COMMITMENT OFFICE

CHAPTER 810. CIVIL COMMITMENT SUBCHAPTER B. CIVIL COMMITMENT

37 TAC §810.156

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.156 concerning Sexually Violent Predators Required to Submit to Global Positioning Satellite (GPS) Tracking. This amendment is proposed under the authority of the Health and Safety Code § 841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would revise the description of the tiers assignments for clients residing at the Texas Civil Commitment Center are required to submit to GPS tracking.

Background & Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by § 841.141 of the Texas Health and Safety Code, is proposing to amend this rule to revise the description of the two most restrictive tiers of treatment in which clients are required to submit to GPS tracking under Section 841.082(a)(4)(A)(ii) of the Health and Safety Code. Tier two has been divided into two parts - Tier 2 and Tier 2-I. Tier 2-I is the most restrictive part being comprised of clients in their first six months of assignment to Tier 2 and clients in the tier that have an incident report sustained at a Behavioral Management Review (BMR).

Fiscal Note

Stanley Muli, TCCO Chief Financial Officer, has determined that, for each year of the first five years the proposed rule will be in effect there will be minimal fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in

effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

TCCO has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Analysis

TCCO has determined that this 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Gregg Cox, General Counsel, Texas Civil Commitment Office 4616 W. Howard Lane, Building 2 Suite 350, by fax to (512) 341-4645, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register*.

Government Growth Impact Statement

This proposed amendment of a definition and the implementation of the proposal:

Does not create or eliminate a government program;

Does not require the creation of new employee positions or eliminate existing employee positions;

Does not require an increase or decrease in future legislative appropriations to the agency;

Does not require an increase or decrease in fees paid to the agency;

Does not create a new regulation;

Does not expand, limit, or repeal an existing regulation;

Does not increase or decrease the number of individuals subject to the rules applicability; and

Does not positively or adversely affect the state's economy.

Statutory Authority

The amendment is proposed under Texas Health and Safety Code § 841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841.

No other statutes, articles, or codes are affected by this proposal.

§810.156. *Sexually Violent Predators Required to Submit to Global Positioning Satellite (GPS) Tracking.*

Sexually violent predator clients shall be required to submit to GPS tracking when the client:

- (1) Leaves the civil commitment center for any reason;
- (2) Reside at the civil commitment center and are assigned to Tier 1 or Tier ~~2-1~~ [2] or are a new arrival that have not yet been assigned a tier level;
- (3) Are program non-compliant as determined by the Office;
- (4) Have a special condition of supervision such as parole supervision requiring them to submit to GPS monitoring; or
- (5) Reside in the community outside a civil commitment center.

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 October 22, 2021.

TRD-202104265

Marsha McLane

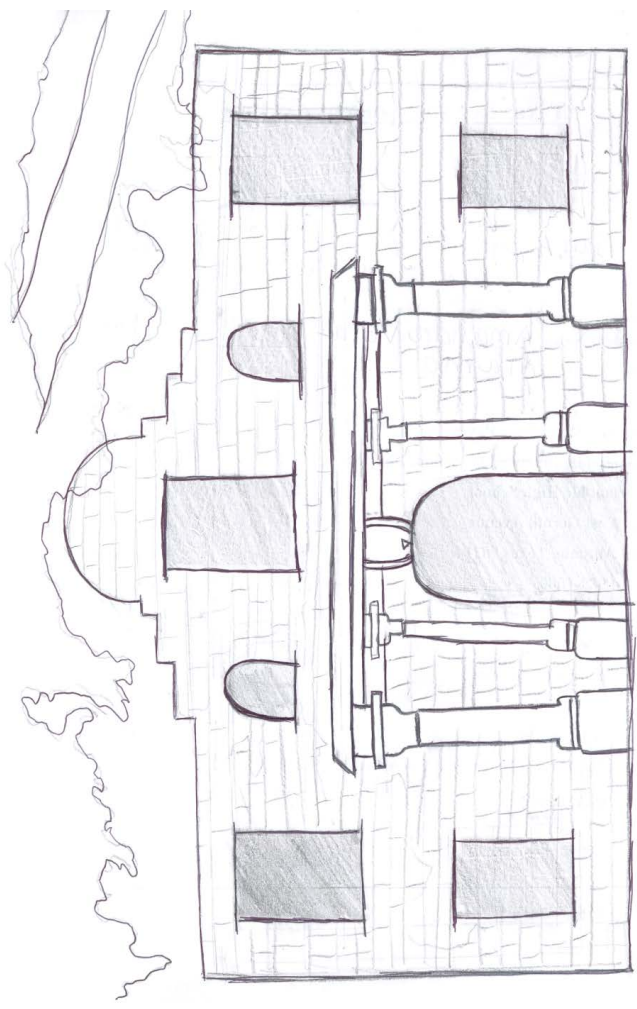
Executive Director

Texas Civil Commitment Office

Earliest possible date of adoption: December 5, 2021

For further information, please call: (512) 341-4421





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER I. REPORTING

1 TAC §355.7201

The Texas Health and Human Services Commission (HHSC) adopts §355.7201, concerning Novel Coronavirus (COVID-19) Fund Reporting. Section 355.7201 is adopted with changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4928). This rule will be republished.

BACKGROUND AND JUSTIFICATION

This rule is necessary to comply with the 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143), and S.B. 809, 87th Legislature, Regular Session, 2021.

The rule outlines definitions, reporting requirements, guidelines, and procedures for health care institutions, as defined by Civil Practice and Remedies Code §74.001, including certain hospitals and nursing facilities, to report received federal COVID-19 funding. The COVID funding includes federal money received under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

The rule outlines penalties for providers who fail to submit the required reports, in alignment with the provisions of S.B. 809 and Rider 143.

HHSC will compile and analyze the data and submit required legislative reports. S.B. 809 requires quarterly reports, and Rider 143 requires HHSC to submit reports on December 1st and June 1st of each fiscal year. Appropriations in Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023 are contingent on the submission of the reports due December 1, 2021, and June 1, 2022.

The required reporting for both the providers and HHSC is anticipated to terminate by September 1, 2023.

COMMENTS

The 21-day comment period ended September 3, 2021.

During this period, HHSC received comments regarding the proposed rule from seven commenters, including Christus Health-care; the Independent Coalition of Nursing Home Providers; LeadingAge Texas; Texas Assisted Living Association; Teaching

Hospitals of Texas; Texas Healthcare Association; and the Texas Hospital Association. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Commenters requested an extension beyond the current deadline of October 1, 2021, for the first report due to another COVID-19 surge currently occurring in Texas.

Response: Providers may request an extension pursuant to subsections (e)(2) and (e)(3). HHSC may grant extensions of up to 15 days, as needed on a case-by-case basis if the extension is requested prior to the due date. No changes were made to the rule as a result of this comment.

Comment: Commenters requested that the initial due date for the first report should be moved to November 1, 2021, because it covers 19 months and will take more time to compile. Commenters also noted that the rule will not be adopted prior to the October 1, 2021, effective date, after which non-compliant providers will be penalized.

Response: HHSC appreciates the input and encourages providers to request extensions prior to the due date if needed. Additionally, in alignment with the U.S. Department of HHS on their COVID-19 Provider Funding reporting, HHSC will offer a grace period up to November 30, 2021, for providers submit the required reports. HHSC has amended the rule to add subsection (g)(5) to clarify this.

Comment: Commenters requested that the state change from monthly to quarterly reporting to align with the federal COVID reporting requirements as monthly is overly burdensome and unnecessary.

Response: S.B. 809 requires that providers submit reports monthly. No changes were made to the rule as a result of this comment.

Comment: Commenters requested HHSC to minimize duplication of federal reporting requirements where possible. They recommended that as an alternative, HHSC use the federal reports for COVID-19 related funds published here: <https://tags.hhs.gov/Coronavirus/Providers>.

Response: HHSC appreciates that the federal information is displayed by state and by provider. The lump sum total amount of funds received does not provide enough detail to generate the report as required by S.B. 809 and Rider 143 of the 87th legislative session. Rider 143 requires, "*The first submission of the report shall also include a description of any requirements implemented for nursing facilities in response to the COVID-19 pandemic, the cost to nursing facilities to implement the requirements, and recommendations on whether or not the requirements should be continued after the end of the public health emergency.*" In addition, S.B. 809 requires that HHSC exclude federal money "*received as a loan during the coronavirus dis-*

ease a public health emergency from the United States Small Business Administration as part of a paycheck protection program." In order to acquire this information, HHSC must request additional detail beyond what is available in the federal look-up tool. Therefore, no changes were made to the rule as a result of this comment. However, HHSC will continue to monitor and examine available federal data to see if required questions can be reduced in the future.

Comment: Commenter stated that S.B. 809 requires reporting on "money received" from federal sources for assistance during the public health emergency but does not require providers to report on costs, uses, or any other information. Rider 143 directs HHSC to develop a report on "total value and uses" of COVID-19 funds by hospitals and nursing facilities and the "cost to nursing facilities" to implement certain requirements but does not allow for the collection of cost data or any other information HHSC deems necessary.

Response: HHSC combined the reporting requirements for S.B. 809 and Rider 143 as they are very similar. The report requests additional information only for nursing facilities, hospitals, and hospital systems. No changes were made to the rule as a result of this comment.

Comment: Commenters noted that the rule did not include detail for providers on how to report. A commenter stressed that HHSC should begin communicating with providers about the reporting requirement as soon as possible. Additional detail was requested to ensure providers have guidance on specifics of format and source specifics to allow providers to report to HHSC.

Response: HHSC sent an initial GovDelivery notification to providers and stakeholders that are subscribed to the applicable topics with details regarding the reporting on September 1, 2021. HHSC sent an additional GovDelivery notification on September 10, 2021, informing providers and stakeholders on the availability of the reporting portal. Additional details and a PDF copy of the report are available on the HHSC Provider Finance Website at <https://pfd.hhs.texas.gov/provider-finance-communications>. The specific report questions are not included in the rule in order to allow for changes if necessary. No changes were made to the rule as a result of this comment.

Comment: Commenters requested that HHSC be available for additional discussions to allow providers to explain their obligations and challenges to provide care during the pandemic to avoid unnecessary financial reporting burdens on short timelines.

Response: HHSC is available to meet with stakeholders on request when questions arise with either this reporting requirement or other initiatives. No changes were made to the rule as a result of this comment.

Comment: A commenter raised the question of whether Rider 143 makes appropriations for Strategy A.2.4 contingent on HHSC submitting reports timely or the providers submitting reports timely.

Response: Appropriations in Strategy A.2.4 are contingent on HHSC's timely submission of the reports. HHSC will be unable to submit the reports timely and secure Strategy A.2.4 appropriations if nursing facilities fail to submit the required reports. No changes were made to the rule as a result of this comment.

Comment: Commenters recommended that the last sentence of §355.7201(f)(4) be removed as there is no legal authority in their

opinion in either S.B. 809 or Rider 143 that supports withholding appropriations from providers due to insufficient reporting.

Response: There is no §355.7201(f)(4), HHSC assumes the reference was to §355.7201(g)(4). Appropriations in Strategy A.2.4 are contingent on HHSC's timely submission of the reports. HHSC will be unable to submit the reports timely and secure Strategy A.2.4 appropriations if nursing facilities fail to submit the required reports. No changes were made to the rule as a result of this comment.

Comment: Commenters noted that the rule is not clear whether hospital reporting and nursing facility reporting are linked. The terms of "providers" and "facilities" in §355.7201(g) could be interpreted to encompass hospitals or other healthcare institutions. They recommended adding specificity to §355.7201(g) to denote nursing facilities and replace "provider" with "health care institution" in §355.7201(g)(2) - (3) and replace "provider" in §355.7201(g)(4) with "nursing facilities."

Response: HHSC has revised the language in §355.7201(g)(1) - (4) to ensure it is clear which subsection is applicable to which type of health care institution.

Comment: A commenter recommended that HHSC create a technical workgroup to develop reporting to meet the legislative intent and HHSC's needs.

Response: In order to meet the legislatively established reporting deadlines, HHSC was unable to convene a workgroup to create the S.B. 809 and Rider 143 report. However, HHSC will consider this for future reports, subject to legislatively mandated deadlines. No changes were made to the rule as a result of this comment.

HHSC made a few minor edits to correct spelling in subsection (a), add a hyphen to "end stage" in subsection (c)(11), and expanded the abbreviation of "PHE" to "Public Health Emergency" in subsection (f).

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; 2022-23 General Appropriations Act, S.B. 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 143); and Texas Health and Safety Code Chapter 81A, which requires HHSC to establish procedures for health care institutions to report required information.

§355.7201. *Novel Coronavirus (COVID-19) Fund Reporting.*

(a) Introduction. The Texas Health and Human Services Commission (HHSC) collects monthly reports from health care institutions to compile legislatively-mandated reports. This section outlines the reporting requirements related to novel coronavirus (COVID-19) federal fund reporting. This section also describes the circumstances in which penalties and recoupments will be necessary for certain provider types for failure to submit required monthly reports.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms when used in this section are defined as follows.

(1) Health care institution--As defined by Civil Practice and Remedies Code §74.001.

(2) HHSC--The Texas Health and Human Services Commission, or its designee.

(c) Institutions required to complete monthly reports. Health care institutions that are required to submit monthly reports include:

(1) an ambulatory surgical center;

(2) an assisted living facility licensed under Texas Health and Safety Code Chapter 247;

(3) an emergency medical services provider;

(4) a health services district created under Texas Health and Safety Code Chapter 287;

(5) a home and community support services agency;

(6) a hospice;

(7) a hospital;

(8) a hospital system;

(9) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with the Social Security Act §1915(c) (42 U.S.C. §1396n), as amended;

(10) a nursing home; and

(11) an end-stage renal disease facility licensed under Texas Health and Safety Code §251.011.

(d) Reporting requirements. A health care institution is required to report on moneys received under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. §9001 et seq.), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), and the American Rescue Plan Act of 2021 (Pub. L. No. 117-2). HHSC may also request additional information related to direct or indirect costs associated with COVID that have impacted the provider's business operation and any other information HHSC deems necessary to appropriately contextualize the moneys received as described in this subsection. HHSC will collect information and the requested data may vary by provider type based on legislative direction.

(e) Frequency of reporting.

(1) Submission of data will be required on a monthly basis.

(2) Initial reporting will begin on September 1, 2021, and is due by October 1, 2021. The initial reporting period will be for January 31, 2020, through August 31, 2021. HHSC may choose to grant the provider an extension of up to 15 calendar days if the provider notifies HHSC that additional time is required to submit the initial report prior to the due date.

(3) Subsequent monthly reports will be due by the first day of each month and will cover the time-period two months prior. For example, the report due November 1, 2021, will cover September 1, 2021 through September 30, 2021. HHSC may grant the provider an extension of no more than 15 calendar days if the provider notifies HHSC that more time is needed prior to the due date.

(f) HHSC legislatively-mandated reports. HHSC will compile reports based on submitted data and submit the reports on a quarterly

basis to the Governor, Legislative Budget Board, and any appropriate standing committee in the Legislature. Quarterly reports will be submitted beginning December 1, 2021, and continue March 1, June 1, and September 1 thereafter. Upon conclusion of the Public Health Emergency, the submission frequency may be reduced to semi-annually on December 1 and June 1 of each fiscal year.

(g) Penalties for failure to report. Specified providers are required to report information as requested on a monthly basis to HHSC.

(1) A hospital, hospital system, or nursing facility that does not report the requested information will be identified by name, including a unique identifying number, such as National Provider Identification number, in HHSC's legislatively-mandated reports.

(2) Failure to report 2 or more times in a 12-month period will result in notification to the appropriate licensing authority who may take disciplinary action against a health care institution that violates this chapter as if the institution violated an applicable licensing law.

(3) Failure to report will result in the issuance of a vendor hold on future payments to the identified provider after 30 days following the due date of the required report. The vendor hold will be released after the health care institution has submitted all delinquent reports to HHSC.

(4) Appropriations in 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC) Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023 are contingent on the submission of the reports due December 1, 2021, and June 1, 2022. If HHSC is unable to utilize appropriations for nursing facilities from Strategy A.2.4 as a result of insufficient reporting from nursing facilities, HHSC will suspend all payments to nursing facilities until such a time as HHSC is authorized to continue making expenditures under Strategy A.2.4.

(5) HHSC will offer a grace period until November 30, 2021, for a provider to submit the required reports. While the deadlines to report will not change, during that period HHSC will not take an action described in paragraphs (2) or (3) of this subsection as long as the provider has submitted all reports required under this section no later than December 1, 2021. A provider's failure to submit a report during that period will not be considered in a subsequent reporting period as long as the provider has completed all reports required under this section no later than December 1, 2021.

(h) Duration. This reporting requirement ends on August 31, 2023 or as specified by HHSC.

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 October 19, 2021.

TRD-202104207

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: November 8, 2021

Proposal publication date: August 13, 2021

For further information, please call: (512) 438-2680



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.55

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.55, relating to weather emergency preparedness, with changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5694) to implement weather emergency preparation measures for generation entities and transmission service providers (TSPs) in the Electric Reliability Council of Texas (ERCOT) power region, as required by Senate Bill 3 (SB 3), 87th Legislature Regular Session (Regular Session). These amendments are adopted under Project Number 51840. The rule will be republished.

New §25.55 represents the first of two phases in the commission's development of robust weather emergency preparedness reliability standards and will help ensure that the electric industry is prepared to provide continuous reliable electric service throughout this upcoming winter weather season. Specifically, the rule requires generators to implement winter weather readiness recommendations identified in the 2012 Quanta Technology Report on Extreme Weather Preparedness Best Practices (2012 Quanta Report) and to fix any known, acute issues that arose from winter weather conditions during the 2020-2021 winter weather season. Similarly, this rule requires TSPs to implement key recommendations contained in the 2011 Report on Outages and Curtailments During the Southwest Cold Weather Event on February 1-5, 2011, jointly prepared by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation (2011 FERC/NERC Report), and to fix any known, acute issues that arose during the 2020-2021 winter weather season. Further, this rule requires a notarized attestation from the highest-ranking representative, official, or officer with binding authority over each of the above entities attesting to the completion of all required actions.

The commission will develop phase two of its weather emergency preparedness reliability standards in a future project. The phase-two weather emergency preparedness reliability standards will consist of a more comprehensive, year-round set of weather emergency preparedness reliability standards that will be informed by a robust weather study that is currently being conducted by ERCOT in consultation with the Office of the Texas State Climatologist.

The commission received comments on the proposed rule from AARP; Advanced Power Alliance and American Clean Power Association (APA and ACP); AEP Texas Inc. and Electric Transmission Texas LLC (AEP Companies); Calpine Corporation (Calpine); Capital Power Corporation (Capital Power); CenterPoint Energy Houston Electric, LLC (CenterPoint); City of Houston; Conservative Texans for Energy Innovation; Enbridge, Inc. (Enbridge); Enel North America (Enel); Exelon Generation Company, LLC (Exelon); Lower Colorado River Authority (LCRA); Lower Colorado River Authority Transmission

Services Corporation (LCRA TSC); NextEra Energy Resources, LLC (NextEra); Oncor Electric Delivery Company, LLC (Oncor); Office of Public Utility Counsel (OPUC); Public Citizen; RWE Renewables America, LLC (RWE); Savion, LLC (Savion); Sharyland Utilities, LLC (Sharyland); Solar Energy Industries Association (SEIA); Steering Committee of Cities Served by Oncor (Oncor Cities); Texas Competitive Power Advocates (TCPA); Texas Advanced Energy Business Alliance (TAEBA); Texas Electric Cooperatives, Inc. (TEC); Texas Public Power Association (TPPA); Texas Solar Power Association (TSPA); Texas-New Mexico Power Company (TNMP); Texas Industrial Energy Consumers (TIEC); and Vistra Corporation (Vistra).

General Comments

Two-Phase Approach

OPUC, TPPA, and Conservative Texans for Energy Innovation supported the two-phase approach. OPUC stated that the two-phase approach will allow standards to be in place for the upcoming winter while still allowing time to develop more robust standards in the coming months. Oncor Cities stated that the rule should include summer preparedness. Oncor Cities also requested an explanation of the scope of the ERCOT weather study and how the ERCOT weather study will be used as an input to the weatherization standard. Oncor Cities requested an explanation of the scope of the second phase of this legislative implementation. Oncor Cities suggested that generation entities and TSPs will be able to plan more effectively if these concepts are more fully developed now.

Commission Response

This rule is focused on establishing weather emergency preparedness reliability standards for the 2021-2022 winter weather season. The commission will develop phase two weather emergency preparedness reliability standards in a future project that will consist of a more comprehensive, year-round set of weather emergency preparedness reliability standards that will be informed by a robust weather study that is currently being conducted by ERCOT in consultation with the Office of the Texas State Climatologist. The commission disagrees with Oncor Cities that including summer preparedness standards in phase one of this project is required to comply with SB 3.

2012 Quanta Report and 2011 FERC/NERC Report

Oncor Cities stated that the rule should reference both the specific winter readiness actions identified in the 2012 Quanta Report and the key recommendations contained in the 2011 FERC/NERC Report the commission requires entities to implement through this rule. Oncor and Vistra supported the commission's goal of implementing key recommendations from the 2011 FERC/NERC Report for the 2021-2022 winter weather season as the first phase of this rulemaking.

Commission Response

The commission declines to make changes in response to the comments of Oncor Cities. The rule requires generators to implement certain winter weather readiness recommendations identified in the 2012 Quanta Report and to fix any known, acute issues that arose from winter weather conditions during the 2020-2021 winter weather season. The commission also requires TSPs to implement key recommendations contained in the 2011 FERC/NERC Report. Adding general references to those reports to the language of the rule would introduce ambiguity without improving the rule's clarity.

RWE stated that the best practices from the 2012 Quanta Report may be outdated because the generation resource mix in the ERCOT power region includes higher percentages of wind, solar, and energy storage resources than ten years ago.

Commission Response

The requirements in the rule are based only in part on the 2012 Quanta Report and the associated requirements in the rule remain appropriate. The requirement to fix any known, acute issues that arose from winter weather conditions during the 2020-2021 winter weather season addresses RWE's concerns with the changed resource mix in the ERCOT power region.

Gas Supply

Oncor Cities recommended that the commission require a generation entity to demonstrate that its gas supply is weatherized to a set of specific and definable standards and should coordinate with the Railroad Commission of Texas (RRC) on any aspect of the rulemaking concerning weatherization for gas facilities.

Commission Response

The commission declines to adopt Oncor Cities's recommendation to require a generation entity to demonstrate that its gas supply is weatherized. Neither the commission nor a generation entity can compel weatherization compliance from its gas supplier. Moreover, many generation entities do not have a choice of gas fuel suppliers for electric generation. Finally, in Section 5 of SB 3, which amended §86.044 of the Natural Resources Code, the Legislature directed the RRC to develop weatherization standards for gas fuel suppliers. The commission is working closely with the RRC to develop a weatherization framework that covers the electric-gas supply chain that is critical for electric generation.

Critical Natural Gas Facilities

In addition to weather emergency preparedness reliability standards, the Legislature passed legislation requiring the commission and the RRC to collaborate on developing a process to identify certain natural gas facilities and entities that are critical to the electric supply chain and designate those facilities as critical load during energy emergencies. Once designated critical, these natural gas facilities will be required to provide electric utilities with certain information to assist in establishing load shed and power restoration priorities. Public Citizen expressed concern that the RRC's proposed rules related to critical natural gas facilities do not require enough information about those facilities to be shared with electric utilities to be able to appropriately designate the facilities as critical to electric generation and to prioritize their needs. Public Citizen stated that this will prevent the commission from meeting the goals it sets for itself in this rulemaking. Public Citizen stated that the commission should recommend that the RRC establish a better process for designating critical gas suppliers.

Commission Response

The commission has no authority to direct rulemaking projects taken by the RRC. The two state agencies are collaborating on rulemaking efforts to direct what information natural gas facilities must provide to the commission, RRC, and ERCOT. The commission will continue to collaborate with the RRC on the issue of critical load designations of natural gas facilities, but this issue is beyond the scope of this rulemaking.

Distributed Energy Resources

TAEBA recommended the commission modify existing rules to ensure that distributed energy resources can deliver and be compensated for the range of grid services they can provide. According to TAEBA, a near-term focus on augmenting demand-side resources' ability to meet reliability needs is squarely consistent with PURA §38.075 and would complement the commission's efforts to enhance both supply-side reliability and reliability of the transmission and distribution utility infrastructure relied upon to deliver power to Texans under all weather conditions. TAEBA stated that the commission could exercise its authority conferred in PURA to initiate and implement a range of policies and regulations that recognize distributed energy resources' ability to contribute to resource adequacy in a manner that mitigates catastrophic grid disruptions, shields customers and utilities from extreme financial risk, increases resource diversity, and enhances system flexibility.

Commission Response

The commission disagrees with TAEBA's interpretation of PURA §38.075. The statute requires the preparation of transmission facilities to be able to provide service in weather emergencies. TAEBA's proposals are beyond the scope of this rulemaking and are more properly addressed as a part of the commission's market design efforts.

Confidentiality

Calpine and TCPA requested modifications to subsections (a) and (b) to address the commercial and operational sensitive nature of the winter weather readiness reports to be submitted to the commission and ERCOT. Similarly, TPPA requested the commission confirm that entities would be permitted to submit information confidentially. TEC also recommended adding a new, wholly different subsection (h) pertaining to the confidential critical energy infrastructure information that may be provided in the reports. Conversely, Oncor Cities requested that the winter weather readiness reports submitted by generation entities and TSPs be made publicly available.

Commission Response

The commission makes no revisions to the rule in response to these comments. An entity required to submit information to the commission may assert the confidentiality of that information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). ERCOT also has procedures to address information that is submitted as confidential in its Protocols.

The commission declines to explicitly require that winter weather readiness reports be made publicly available because these reports may contain confidential critical energy infrastructure information or competitively sensitive information.

Subsection (a), Application

The proposed subsection would make the rule applicable to the ERCOT and to generation entities and TSPs in the ERCOT power region.

Calpine recommended that the commission provide a good cause exception to the rule for resources that are mothballed or are in a period of extended outage through the winter weather season. Similarly, TCPA offered language that would directly exempt these units from being subject to the rule. TCPA also suggested that ERCOT consider whether a resource has been seasonally mothballed or is scheduled to be retired when determining an appropriate cure period. Although these comments

were made in reference to subsections (d) and (c) respectively, the substance relates to the application of the rule, and is therefore addressed here.

Commission Response

The commission agrees that mothballed generation resources that will not be available to provide energy or ancillary services during the 2021-2022 winter weather season should not be required to adhere to the requirements of this rule. However, the generation entity in control of the generation resource must have received an ERCOT-approved notice of suspension for the 2021-2022 winter weather season prior to December 1, 2021 to exempt its resource from the requirements of this rule. If the generation entity intends to return the mothballed resource to service during the winter weather season, the resource is not required to comply with this rule until it is returned to service. The commission, therefore, revises subsection (a) of the rule accordingly.

Paragraph (b)(1), Definition of Cold Weather Critical Component

The proposed paragraph would define the term "cold weather critical component" as "any component that is susceptible to freezing, the occurrence of which is likely to lead to unit trip, derate, or failure to start."

AEP Companies, CenterPoint, LCRA TSC, Oncor, TNMP, and TPPA commented that the definition is focused on generation resources and requested either that it not apply to transmission facilities or that it be changed to expressly address transmission facilities. TPPA and Sharyland recommended a revision to the definition so that it would apply more clearly to both generation resources and transmission facilities. Oncor requested clarification that "unit trip, derating, or failure to start" refers to a generation unit's tripping, derating, or failure. Oncor stated that the term "cold weather critical component" should apply only to TSP-owned high voltage switching stations and the high voltage portions of TSP-owned load-serving substations. Oncor further recommended that the commission specifically exclude the distribution-voltage portions of substations, as well as transmission lines, from this definition. Similarly, TNMP requested the addition of the following definition to reduce the scope of the rule: "Transmission system(s) and facility(ies) - Means a high-voltage switching station equipment or substation high-side load serving equipment."

Commission Response

The commission revises the definition of "cold weather critical component" to expressly apply to both generation entities and TSPs. The commission has applied elements of both TPPA's and Oncor's recommendations and addresses TNMP's request. The revised definition captures all transmission-voltage components within the fence surrounding a TSP's high-voltage switching station or substation. This amended definition is also appropriate for the standards in this rule because it focuses preparations on the transmission components most susceptible to preventable outages that could affect system reliability during a winter weather emergency.

TEC requested that the definition of cold weather critical components be changed to include components that will cause a generation resource to trip offline and which may reasonably be protected against freezing. TEC stated that this change would provide certainty to resource owners and TSPs regarding applicable components and would prioritize components that can be protected against freezing by applying protective measures. Ac-

ording to TEC, if covered components are not limited to those that can reasonably be protected, entities will lack certainty regarding regulatory compliance; the universe of eligible components will be undefined and may include components that cannot be reasonably protected.

Commission Response

The commission declines to adopt TEC's recommendation to expressly limit the definition to components that can be protected against freezing by applying protective measures. The commission expects that an entity will use appropriate professional judgment to identify and protect those components that are critical to continuous operation to ensure that its implementation of the rule has a meaningful result.

LCRA requested deletion of the term "cold weather critical component." LCRA asserted that the proposed definition could potentially include millions of individual components that make up a generating facility. LCRA claimed that any component of a generation resource that fails could in theory lead to the resource tripping offline, becoming incapable of starting, or derating its available capacity. Moreover, LCRA suggested that any component could theoretically freeze. Because the definition, in LCRA's opinion, implicates every component of every generation resource, the rule creates an "impossibly broad and unenforceable standard" that leaves generation entities with little understanding of what preparations need to be undertaken for winter operation.

Commission Response

The commission declines to adopt LCRA's recommendation because its hypothetical scenarios stray beyond the concept of a "critical component." Not every piece of equipment in a generation resource is critical to the reliable operation of that resource. Moreover, both FERC, in its February 2021 Cold Weather Grid Operations: Preliminary Findings and Recommendations report (2021 FERC report), and the 2012 Quanta Report place the identification of critical components and freeze protection schemes near the top of the lists in their respective recommendations. The commission expects that an entity will use appropriate professional judgment to ensure that its compliance with the rule will produce a meaningful result.

Vistra stated that the definition of cold weather critical component goes beyond focusing on a unit failure that would affect system reliability in the ERCOT power region, which was the goal of SB 3. Instead, Vistra continued, the definition identifies a critical component as one which, if it freezes, "is likely to lead to unit trip, derate, or failure to start." Vistra stated that this definition could result in an unworkable standard because hundreds of thousands of components contribute in a way to maximize output. According to Vistra, derates are common and largely unavoidable, especially in extreme conditions, and provided an example of environmental monitoring equipment becoming impacted by weather conditions, requiring an environmental derate while the issue is investigated and remediated. Vistra indicated that a better definition would cover a non-weatherized component failure caused by freezing that would lead to a total and immediate loss of unit output, and TCPA made a similar comment.

Commission Response

Although a derate may be necessary in a weather emergency to address an issue, as described in Vistra's comments, the definition does not refer to such a scenario. Rather, the definition is

limited to the freezing of a cold weather critical component being the direct cause of a derate. Accordingly, the commission declines to adopt Vistra's recommendation.

Enel and RWE requested a revision to clarify that cold weather critical components are required to function in defined operating ranges. Capital Power stated that wind turbine blades are not susceptible to freezing (although they are susceptible to icing) and requested that wind turbine blades and poor road conditions that do not allow personnel to access facilities be excluded from the definition.

Commission Response

The commission addresses the issue of operating ranges, which was raised by Enel and RWE, in its response to comments on paragraph (c)(1) of the rule.

The commission declines to adopt Capital Power's recommendation to exclude specific components from the definition of "cold weather critical component". However, the commission finds that addition of a reference to icing in the definition is appropriate and revises the paragraph accordingly.

The commission also revises the definition to refer to a resource rather than an undefined "unit."

Paragraph (b)(2), Definition of Energy Storage Resource

The proposed paragraph would define energy storage resource as "(a)n energy storage system registered with ERCOT for the purpose of providing energy or ancillary services to the ERCOT grid and associated facilities behind the system's point of interconnection necessary for the operation of the system."

TCPA and Calpine requested deletion of the definition. They stated that energy storage resources are generation resources and, therefore, can be covered by the definition of generation resource. TEC requested that the definition be changed to refer to a facility "that sells" energy or ancillary services to better track the language of PURA §35.0021(a).

Commission Response

The commission declines to adopt the recommendations to delete the definition of energy storage resource or change the definition of generation resource. This rule applies within the ERCOT power region: therefore, the definition's similarity to the comparable definition in the ERCOT Protocols is appropriate.

However, consistent with the discussion below regarding the definition of generation resource, the commission revises the definition of energy storage resource to limit the application of the term only to those associated facilities controlled by the generation entity and that are not part of a manufacturing process that is separate from the generation of electricity.

Paragraph (b)(4), Definition of Generation Resource

The proposed paragraph would define generation resource as "(a) generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource, as well as associated facilities behind the generator's point of interconnection necessary for the operation of the generator."

Calpine and TCPA requested that the definition include only facilities owned and controlled by the generator and described an arrangement where a generator uses steam from an industrial process not controlled by the generator. TIEC requested revision of the definition to reference "auxiliary" facilities instead of "as-

sociated facilities," with the intent of excluding distinct manufacturing processes and avoiding disputes about whether non-generating industrial facilities that consume steam or may otherwise be electrically connected to a cogeneration unit are also required to be weatherized. TEC requested that the definition be changed to refer to a facility "that sells" energy or ancillary services to better track the language of PURA §35.0021(a).

Commission Response

The commission agrees with Calpine and TIEC that the definition of generation resource should be limited to those associated facilities controlled by the generation entity, and revises the rule accordingly. The commission, however, declines to further limit the definition to apply to associated facilities that are both controlled and owned by the generation entity because some associated facilities could be controlled contractually rather than through ownership.

The commission also declines to adopt TIEC's recommendation to change "associated" to "auxiliary." According to TIEC, the term "auxiliary" refers to a more limited set of manufacturing equipment. As a result, equipment or facilities that could directly impact the generation resource's operations might remain unprotected. The commission agrees with TIEC that the scope of the rule should not apply to equipment or facilities that are part of a manufacturing process that is separate from the generation of electricity and revises the definition accordingly.

Paragraph (b)(5), Definition of Inspection

The proposed paragraph would define inspection as follows: "The activities that ERCOT engages in to determine whether a generation entity is in compliance with subsection (c) of this section or whether a TSP is in compliance with subsection (f) of this section. An inspection may include site visits; assessments of procedures; interviews; and review of information provided by a generation entity or TSP in response to a request by ERCOT, including review of evaluations conducted by the generation entity or TSP or its contractor. ERCOT will determine, in consultation with the commission, the number, extent, and content of inspections and may conduct inspections using both employees and contractors."

Oncor requested that either this definition of inspection or subsection (g) be clarified to explicitly state that ERCOT's inspection authority under the rule derives from the commission's statutory authority under PURA §14.204, which allows the commission to authorize an agent to "inspect the plant, equipment, and other property of a public utility within its jurisdiction ... at a reasonable time for a reasonable purpose." Oncor also stated that ERCOT's inspection program should require that inspections occur at a reasonable time with reasonable advanced notice to the TSP and that the rule should recognize that ERCOT-conducted inspections should comply with applicable NERC requirements, including a TSP's physical security plan for station access.

Commission Response

The rules adopted herein implement PURA §38.075(b), which requires ERCOT to inspect transmission facilities in the ERCOT power region. While PURA §14.204 authorizes the commission and its designated agents to inspect plant, equipment, and property of a public utility, citation to this statute does not provide any added clarity to ERCOT's scope of authority to implement this rule. Similarly, the commission declines to incorporate a reference to the NERC requirements suggested by Oncor because it is unnecessary. However, the commission revises paragraphs

(d)(1) and (g)(1) to require generation entities and TSPs, respectively, to admit ERCOT inspectors into areas of the resource or station that will be inspected. Because the safety of the inspectors and employees and the security of the resource and station are of paramount importance, the commission also expects all parties to take the appropriate safeguards during inspections.

TEC, Calpine, and TCPA recommended changes to the definition of inspection that would enable stakeholders to provide input into the policies and procedures of ERCOT's inspection of generation resources and transmission facilities. TEC requested that ERCOT adopt rules regarding the details of ERCOT-conducted inspections for the phase-one rule standards, and that the commission consider and adopt specific inspection protocols in the phase-two rule. According to TEC, these actions would create transparency and consistency in the inspection framework and would allow market participants to clearly understand and provide feedback on the number, extent, and content of the inspections because these parameters would be formalized in rules. Calpine and TCPA requested that the commission require ERCOT to consult with stakeholders to create inspection criteria.

Commission Response

The commission declines to change the definition of inspection. An entity must comprehensively prepare its facilities for weather emergencies instead of focusing efforts on specific components of its facilities known to be included in ERCOT's inspection. The rule provides sufficient specificity for the inspections while giving ERCOT the flexibility to conduct the inspections in an efficient, and effective manner. The commission may consider specifying additional requirements for ERCOT inspections as part of the phase-two development of the weather emergency preparedness reliability standards.

The proposed definition of inspection contained a provision that requires ERCOT to determine the number, extent, and content of inspections in consultation with the commission. Because this provision imposes a requirement on ERCOT, the commission moves the provision from this definition to paragraphs (d)(1) and (g)(1). The commission revises the definition to specifically refer to paragraphs (1) of subsections (c) and (f) and to acknowledge that ERCOT needs the flexibility to prioritize its inspections based on risk level, as required by PURA §35.0021(c-1) and §38.075(c).

Paragraph (b)(6), Definition of Resource

The proposed paragraph would define resource as "(a) generation resource or energy storage resource."

Calpine and TCPA requested deletion of this definition on the basis that it is unnecessary because the definition of generation entity includes the term resource in it.

Commission Response

A definition of resource allows the defined terms "generation resource" and "energy storage resource" to be easily addressed jointly throughout the rule. Therefore, the Commission declines to adopt Calpine and TCPA's recommendation.

Proposed Paragraph (b)(7); Adopted Paragraph (b)(8), Weather Emergency Preparation Measures

The proposed paragraph would define weather emergency preparation measures as "(m) measures that a generation entity or TSP takes to support the function of a facility in extreme weather conditions, including weatherization, fuel security, staffing plans, operational readiness, and structural preparations."

TEC requested revision of the definition to incorporate the preparation standard articulated in PURA §35.0021. TCPA requested a revision to specify that the term is limited to aspects of the electric system under the generation entity's control or the TSP's control and cited fuel security as an example of something that should be excluded. Calpine also requested that fuel security be excluded. SEIA requested that the definition be limited to measures described in paragraphs (c)(1) and (f)(1) of the rule. TEC also requested that "including" be changed to "which may include,".

Commission Response

The commission declines to limit the definition of "Weather emergency preparation measures" as recommended by TEC, TCPA, Calpine, and SEIA. The definition describes measures that a generation entity or TSP may take to meet the requirements in paragraphs (c)(1) and (f)(1) of the rule. Those paragraphs address any relevant limitations. Accordingly, the commission deletes the non-exclusive list of types of measures at the end of the definition and instead addresses the types of measures in subparagraphs (c)(1)(A) and (f)(1)(A).

Other Terms

The AEP Companies noted that the definition of weather emergency preparation measures includes a term "extreme weather conditions" that is itself undefined. Capital Power requested a definition of "extreme weather" that would allow generation entities to determine the definition of cold weather based on the unit's location, the owner's experience with operations during cold weather events, and additional commonly used industry resources.

Oncor Cities requested a definition of "winter weather conditions," and APA and ACP requested a definition of "cold weather." APA and ACP also requested a definition of "weather emergency."

Commission Response

The commission accepts APA and ACP's recommendation to define "weather emergency." This rule sets reliability standards for weather emergencies as required by PURA §35.0021(b) and §38.075(a). Therefore, the commission adds a new paragraph (7) to define weather emergency as "a situation resulting from weather conditions that produce a significant risk for a TSP that firm load must be shed or a situation for which ERCOT provides advance notice to market participants involving weather-related risks to the ERCOT power region."

The commission declines to add a definition of extreme weather, extreme weather conditions, winter weather conditions, or cold weather as recommended by the commenters. The commission's new definition of "weather emergency" will provide the context and clarity sought by the commenters.

Subsection (c), Weather Emergency Preparedness Reliability Standards for a Generation Entity

The proposed subsection would establish weather emergency preparedness reliability standards and related procedures for generation entities in preparation for the 2021-2022 winter weather season.

Calpine and TCPA requested that the commission remove "phase one" from the title of the subsection of the rule. Calpine stated that the term could be interpreted to imply that this rule is not final and, therefore, does not fully comply with the statutory deadline for implementation of the reliability standards imposed

by SB 3. TCPA stated that there is no need to designate phases in the rule; when a future phase is implemented, the rule will be amended to reflect those new requirements.

Commission Response

The commission agrees that "phase one" in the title of this subsection is not necessary, and deletes the phrase accordingly.

Paragraph (c)(1), Reliability Standards

The proposed paragraph would establish weather emergency preparedness reliability standards for generation entities in preparation for the 2021-2022 winter weather season.

Fuel-Related Standards

TAEBA stated that the proposed rule does not establish any fuel-related standards or require any specific measures to reduce fuel supply risk. City of Houston requested the addition of a requirement that generators must contract with fuel suppliers and fuel delivery entities with weatherized facilities. City of Houston stated that the cost and effort made by a generator to weatherize its facilities would be wasted if it does not have access to fuel because its suppliers did not weatherize their facilities. City of Houston acknowledged that this might not be possible for the 2021-2022 winter weather season and suggested that generators be required to implement this requirement to the extent possible. City of Houston also requested that the commission require a generator to submit information on its existing fuel supply and fuel delivery contracts that it is unable to modify to require the contractor to weatherize its facilities and fuel sources. City of Houston stated that this requirement will identify at-risk fuel supplies for the 2021-2022 winter weather season and assist the commission in determining the state's preparedness and in preparing the commission's weather emergency preparedness report to the Legislature.

Commission Response

The commission declines to establish fuel-related standards, require a generation entity to contract with fuel suppliers and fuel delivery entities with weatherized facilities, or require a generation entity to submit information on its current fuel contracts to the commission in this rule. The City of Houston's recommendations are beyond the scope of this rulemaking, which is focused on whether the generation entity itself has properly prepared its facilities and personnel for a weather emergency.

Technology-Specific Standards

Savion and Enel requested that the commission promulgate technology-specific requirements. Enel stated that many of these requirements apply broadly across technologies, such as proper documentation; identification of operating limitations and critical failure points; and training and drills, but that some requirements cannot be applied broadly across resources. Enel made resource-specific recommendations for wind, solar, and battery technologies. Similarly, Savion observed that neither the 2012 Quanta Report nor the 2011 FERC/NERC Report addressed solar or energy storage technologies. Savion argued that the commission needs to promulgate standards for solar and energy storage technologies before December 1, 2021 to prevent developers of these technologies from being exposed to \$1,000,000 per day penalties for non-compliance.

Commission Response

The commission declines to include technology-specific requirements as requested by Savion and Enel. Technology-specific re-

quirements are not appropriate or practical because technology continuously evolves. The generation entity is in the best position to know what is needed to comply with the rule for a specific resource. Subparagraphs (c)(1)(A) and (B) are adapted directly from the 2012 Quanta Report and the 2011 FERC/NERC Report. The commission expects a generation entity to apply appropriate professional judgment to comply with the rule to produce meaningful results.

December 1, 2021 Completion Deadline

Proposed subsection (c)(1) would also establish a December 1, 2021 deadline for compliance with the weather emergency preparedness reliability standards for generation entities. SEIA requested clarity about how the commission will address compliance in scenarios where the entity has requested a good cause exception under paragraph (c)(6). SEIA stated that an entity will have to make judgment calls on how to comply with paragraph (c)(1) without an assurance of whether its good cause exception has been granted.

Commission Response

In all of its actions related to complying with the requirements of paragraph (c)(1), a generation entity must use its best efforts. Even if a generation entity notifies commission staff of an assertion of good cause for noncompliance with the December 1, 2021 deadline, as provided by paragraph (c)(6), the generation entity must nevertheless use its best efforts to comply with paragraph (c)(1), including providing a plan to bring its resource(s) into compliance and a schedule by when the resource(s) will be in compliance with the paragraph. A generation entity must not use a request for a good cause exception as a means to delay compliance with the rule. If commission staff disagrees with the entity's assertion of good cause, the generation entity may be subject to enforcement if it did not use its best efforts to comply with the rule requirements for which it sought a good cause exception.

Subparagraph (c)(1)(A), Preparations for Sustained Operation

The proposed subparagraph (c)(1)(A) would establish preparations necessary to ensure the sustained operation of all cold weather critical components during winter weather conditions, such as chemicals, auxiliary fuels, and other materials, and personnel required to operate the resource.

Calpine, Capital Power, Exelon, RWE, TEC, TCPA, TIEC, and Vistra requested that the commission limit the required weatherization measures to those that are reasonable and feasible. These commenters stated that requiring "all preparations necessary to ensure sustained operation" imposes a performance standard. Calpine stated that requiring "all" measures is overly broad because generation entities often learn of which measures are required to sustain operations from experience. Exelon and Capital Power stated that the qualifier is overly broad, covering an almost limitless set of weatherization preparations, without regard to duplication of preparations, their cost/economic benefits, or whether they are tied to the 2012 Quanta Report or an identified risk based on historical performance. TEC stated that without a reasonableness standard the rule would create limitless compliance requirements. TIEC stated that use of the word "ensure" suggests entities could be held at fault for failures beyond their control, thus transforming the rule into a perceived performance standard that could discourage investors from directing resources to the ERCOT market. Capital Power suggested that "all necessary actions" should be further described to clarify what

preparation steps would be required in order to comply with the rule.

Commission Response

The commission agrees that the rule should impose a preparation standard on a generation entity rather than a performance standard on the generation resource. The commission finds the adjective "necessary" could be interpreted as requiring a certain level of resource performance and, thus, replaces it with "intended." To intend is to plan or to have something in mind as a purpose or goal. The use of "intended" in this paragraph clarifies that the rule is a preparation standard. Without limitation, commission staff may take into consideration an entity's compliance with its own plan as a measure of best efforts in meeting the requirements of the rule.

As explained above in the discussion of the December 1, 2021 deadline in paragraph (c)(1), generation entities must use best efforts to meet the requirements specified throughout paragraph (c)(1). The commission changes "All actions" to "Best efforts" to reflect this preparation standard.

TPPA, Capital Power, LCRA, RWE, Enbridge, and APA/ACP requested that the commission define "sustained operation" to specify the length of operation required for compliance. Enbridge provided an example that there may be fuel interruptions or extreme conditions that may cause unavoidable disruption to the equipment's operation, which might impact the "sustained operations" of the entity. TIEC suggested that the commission and ERCOT should focus oversight activities on ensuring that generators take appropriate steps to reasonably winterize their generation units before cold weather occurs, rather than penalizing generators for the ultimate outcome, and to that end suggested replacing "ensure" with "allow" to precede "sustained operations."

Commission Response

The commission declines to define the term "sustained operation" because the regulatory standard of the provision is the preparations taken in advance of operations and not the amount of time an entity is capable of operating. Assuming the generation entity can demonstrate it used its best efforts intended to ensure sustained operation of the generation resource, the compliance standard should be met under the rule.

Enbridge, Enel, NextEra, and RWE stated that the rule needs to take equipment design limitations into account. NextEra stated that the proposed rule could require an operator to operate outside its design parameters and potentially void manufacturer warranties, damage equipment, or create unsafe operating conditions.

Enel recommended that, "as a baseline, no resource should be required to operate outside of limitations." Enbridge requested that the commission adopt language that would, instead, require winter weather preparation measures that would ensure that cold weather critical components perform "as originally designed" during winter weather conditions.

Commission Response

Although a generation entity must use its best efforts to comply with the requirements of paragraph (c)(1), a generation entity is not required to operate a resource outside of its limitations. However, the generation entity must use appropriate professional judgement to determine those limitations and must not set them

in a manner that unnecessarily constrains the capabilities of the generation resources.

The commission replaces "preparations" with the defined term "weather emergency preparation measures" to clarify its intent. Consistent with its discussion of the definition of weather emergency preparation measures, proposed paragraph (b)(7), adopted paragraph (b)(8), the commission adds types of weather emergency preparation measures listed in the proposed definition to paragraph (c)(1)(A).

Subparagraph (c)(1)(B), Installation of Adequate Preparation Measures

The proposed subparagraph (c)(1)(B) would establish installation of adequate preparations necessary to ensure the sustained operation of all cold weather critical components during winter weather conditions, the failure of which could cause an outage or derate.

TEC requested the merger of subparagraph (c)(1)(B) into subparagraph (c)(1)(A) to create a list of possible measures, because it stated that a prescriptive list of specific measures may be inappropriate for certain resources or may inadvertently exclude needed activities best determined by operational personnel. Similarly, LCRA requested the commission move the concept of freeze-susceptible components into subparagraph (c)(1)(A), along with other modifications it stated better reflected the recommendations of the 2012 Quanta Report.

Commission Response

The commission declines to adopt TEC's and LCRA's recommendation to combine subparagraphs (c)(1)(A) and (c)(1)(B) because the subparagraphs address different requirements. Subparagraph (c)(1)(A) is intended to ensure generation entities use their operational expertise to prepare cold weather critical components for operation in winter weather conditions. Although LCRA stated that the term "cold weather critical component" is neither a statutorily defined term nor an industry term of art, the concept is not foreign to industry experts. For example, the term was included in the 2021 FERC report released on September 23, 2021.

Subparagraph (c)(1)(B), on the other hand, addresses specific recommendations developed in the aftermath of the February 2011 winter weather event. Therefore, the commission declines to make changes in response to these comments.

Calpine and TCPA stated that the actions required by subparagraph (c)(1)(B) may not be feasible to implement by December 1, 2021. Instead, they proposed changes to the rule that would allow generation entities to create an inventory of resources that would be used to prepare the generation resource for operation in extreme winter weather. Additionally, Calpine stated that the actions in the draft rule are not necessarily appropriate for extreme winter weather that is typical in the ERCOT power region.

Commission Response

The commission declines to remove the specific preparation measures enumerated in this subparagraph from the rule. Generation resources were not well prepared for winter storms in 2011 and 2021. Lessons learned from both the 2011 and 2021 winter weather events form the foundation for these preparation requirements, and future revisions to the rule may build upon them. The commission expects that a generation entity will use appropriate professional judgment when using its best efforts to implement weather emergency preparation measures. In

addition, a generation entity is not required to implement a particular weather preparation measure specified in the rule if there is good cause for not doing so.

Several parties commented on the requirement to install adequate wind breaks for resources susceptible to outages or derate caused by wind. Enbridge expressed concern that the December 1, 2021 deadline to install these wind breaks may not be feasible. TAEBA sought clarification that the commission was not requiring wind generation resources with controls that shut off the turbine or reduce the turbine's revolutions per minute to install wind breaks, because these automated safety controls could be interpreted as an outage or deration. TPPA contemplated this requirement applied only to a thermal generation resource that is exposed to wind, and both TPPA and Capital Power stated that a strict reading of this rule could require wind generation resources to install wind breaks. TPPA and Capital Power requested that the commission tighten this language to better reflect its intent.

Commission Response

The commission declines to change the rule to explicitly exempt any type of resource from the requirements of subparagraph (c)(1)(B). The commission expects that a generation entity will use appropriate professional judgment to ensure that its compliance with the rule produces a meaningful result. For example, the installation of wind breaks at a wind generation resource would be an illogical interpretation of the rule requirements. In response to TAEBA's comment, the commission confirms that generation output limitations caused by predefined operational controls would not constitute a forced outage or deration in a winter weather emergency.

APA/ACP, Exelon, LCRA, and TCPA each stated that installation of enclosures on sensors for cold weather critical components can be impractical or ineffective in certain cases.

Commission Response

The commission references the 2012 Quanta Report and 2011 FERC/NERC Report as a basis for understanding the lessons learned from past experiences with severe winter weather conditions. To that end, if enclosing certain sensors on the generation resource would be counterproductive, a generation entity can explain in its winter weather readiness report required by paragraph (c)(2) that such an enclosure would render the sensor inoperable under the design or operating limits.

Capital Power and LCRA commented on the requirement to maintain freeze protection components for all equipment, including fuel delivery systems. Capital Power requested the commission provide a definition of a freeze protection component. For example, it wondered whether insulation would be considered a freeze protection component. LCRA noted that not all equipment has its own freeze protection components. LCRA requested further clarification that generation entities should only be responsible for fuel delivery systems it owns and operates.

Commission Response

The commission declines to define "freeze protection component" or to enumerate specific components that comprise the category of freeze protection components. Generation entities have a variety of tools and options to protect equipment from freezing during a winter weather emergency. The commission expects a generation entity to rely on its expertise and professional judgment to determine what tools are best suited to

protect its specific equipment and to maintain those tools so that they provide the required protection. However, the commission agrees to clarify that only fuel delivery systems controlled by the generation entity are required to have freeze protection equipment. Accordingly, the commission revises subparagraph (c)(1)(B).

Capital Power argued that monitoring systems for cold weather critical components should not be required for wind generation resources. Capital Power stated that anti-icing and de-icing technologies are not available in the United States, according to filings and presentations made by GE, Siemens, and Vestas, and therefore the systems to monitor for icing or freezing do not exist either. In support of its position, Capital Power also noted that NERC does not require installation of monitoring systems in regions that experience colder weather than Texas.

Commission Response

The commission declines to change the rule as recommended by Capital Power. NERC's new Cold Weather Reliability Standards are focused on planning. The commission's rule is focused on preparing. The two sets of federal and state regulations will work together to help achieve more reliable outcomes during winter weather emergencies. Moreover, the substitution of NERC's requirements for the ones in the proposed rule does not address the preparation set forth in PURA §35.0021.

Although Enbridge noted the inclusion of a good cause exception process in subsequent parts of the rule, it suggested that generation entities be allowed to either install the required preparation measures or submit a schedule for the installation of the measures to explicitly accommodate supply chain delays. Enbridge further clarified that such a schedule should only be permitted when the generation entity confirms it is unable to make the change without approval, involvement, and direction of the manufacturer.

Commission Response

The commission declines to change the rule as proposed by Enbridge. Generation entities should make their best efforts to complete the actions listed in paragraph (c)(1). The good cause exception provision contained in paragraph (c)(6) is the appropriate method for communicating these types of issues to the commission and ERCOT.

In response to the proposed requirement to establish a schedule to test freeze protection components on an ongoing monthly basis, TCPA stated that winter is the only season in which it would be feasible to test these components in a simulated cold weather environment.

Commission Response

The commission agrees with TCPA that monthly testing should be conducted during the winter weather season as a best practice preparation measure. The commission revises the rule to require testing at least once each month from November through March.

Subparagraph (c)(1)(C), Recurrence Prevention

The proposed subparagraph (c)(1)(C) would require a generation entity to take all actions necessary to prevent a recurrence of any cold weather critical component failure that occurred in the period between November 30, 2020, and March 1, 2021.

Calpine, TPPA, TEC, LCRA, Exelon, Vistra, TAEBA, SEIA, and APA/ACP argued that this provision is overly broad by requiring

an undefined and potentially limitless set of actions that must be taken to "prevent" a recurring cold weather critical component failure. Moreover, the parties echoed comments filed concerning subparagraph (c)(1)(A) in that the requirement to take steps necessary to prevent a failure transforms the rule into a performance standard. According to these commenters, it is not feasible for a generation resource to guarantee it can prevent a component failure; however, it is feasible for a generation resource to guarantee it will take actions necessary to address a prior failure to reduce the likelihood of reoccurrence. Calpine proposed edits that would, in its opinion, maintain the commission's objective of implementing the rule as a preparation standard. Capital Power suggested the commission consider replacing the word "prevent" with the word "mitigate" to make clear that generation owners are not required to adhere to a strict level of perfection at any cost, human or material. Exelon proposed to insert "reasonably necessary". TAEBA and SEIA similarly requested clarification that this provision would not require generation entities to take any actions that would put at risk the health or safety of employees or contractors.

Commission Response

Generation entities must use their best efforts to prevent repeated failures of cold weather critical components. The commission revises subparagraph (c)(1)(C) for consistency with the standards established in subparagraph (c)(1)(A). In addition, the commission reiterates that in no instance is a generation entity required to take an action that presents a real risk of bodily harm to its employees or contractors.

TAEBA and SEIA requested that the commission clarify that the proposed rules should not be interpreted to require a generation entity to implement a weather emergency preparation measure that is inconsistent with good utility practice or is contrary to the design or operating limitations of a generation resource. SEIA further argued that the requirements of this subsection should be interpreted in a manner that does not require a generation entity to implement weather emergency preparation measures that exceed the design or operating limitations prescribed by the original equipment manufacturer.

Commission Response

As the commission stated in response to comments on subparagraph (c)(1)(A), although a generation entity must use its best efforts to comply with the requirements of paragraph (c)(1), a generation entity is not required to operate a generation resource outside of its limitations. However, the generation entity must use its professional judgement to determine those limitations and must not set them in a manner that unnecessarily constrains the capabilities of its resources. In addition, the generation entity can engage in good utility practice to the extent doing so is consistent with the rule's requirement for the use of best efforts.

TPPA and Enel suggested that resource related issues occurring during the period between November 30, 2020, and March 1, 2021, might implicate situations unrelated to operation during winter weather. For example, Enel requested clarification that outages and derations related to resources following operational requirements would not be implicated by this provision. TPPA requested that this requirement be limited to failures that occurred directly due to winter weather, rather than one-off occurrences unrelated to cold weather operations.

Commission Response

The commission agrees with TPPA and Enel's recommendation to clarify that subparagraph (c)(1)(C) applies to failures that occurred due to winter weather conditions between November 30, 2020 and March 1, 2021, and revises the subparagraph accordingly.

Capital Power and Enbridge requested the commission explicitly acknowledge that blade turbine icing cannot be completely prevented.

Commission Response

The commission finds the recommended change to be superfluous, as the rule does not attempt to address every unique characteristic of every generation resource type.

LCRA requested that the commission be explicit that no provision of the rule will be interpreted as requiring a generation entity to redesign any subsystem of an existing generation facility. Specifically, LCRA stated that requiring generation entities to take "all actions" to prevent a weather-related failure hypothetically could require the entity to redesign and rebuild its resource.

Commission Response

As noted above, the commission revises subparagraph (c)(1)(C) for consistency with the standards established in subparagraph (c)(1)(A). This change deletes "all actions" and requires generation entities to use their "best efforts" to address the failures of cold weather critical components. The generation resource operator must decide how best to comply with the requirements of this rule; therefore, the commission declines to make the change recommended by LCRA.

Subparagraph (c)(1)(D), Training

The proposed subparagraph (c)(1)(D) would require a generation entity to provide training on winter weather preparations to operational personnel. Calpine and TCPA stated that generation resources must have employees who are trained not only in the necessary winter weather preparation standards but also in related operations to ensure reliable performance during a winter weather emergency. They each provided similar changes to clarify that training would occur on preparations and operations and be provided to relevant personnel. However, Oncor Cities expressed concern about the lack of specificity in what training programs will be required, leaving the requirement open for broad interpretation. Oncor Cities stated that a rule that is open for broad interpretation and lacks compliance standards risks being ineffective.

Commission Response

The commission declines to adopt Oncor Cities' proposal for a standardized, specific training program for all generation resource types and operations procedures. The training programs must be flexible enough to meet resource-specific operational processes and weather emergency preparation measures. However, the commission agrees with Calpine's and TCPA's recommendation to focus the required training on winter weather preparations and operations and to deliver the training to relevant personnel. Delivering training on both winter weather emergency preparation measures and operations during weather emergencies will improve the effectiveness of operations personnel during weather emergencies. Accordingly, the commission adopts Calpine's recommended language revisions.

Enbridge requested that if the commission or ERCOT seek to enact specific requirements, they should be identified at the ear-

liest possible opportunity so that generation entities would have time to submit comments on applicability and/or limitations.

Commission Response

Tex. Gov't Code §2001.029 requires the commission to consider public comment on the proposed rule prior to adopting any new regulations.

Subparagraph (c)(1)(E), Design and Operating Limitations

The proposed subparagraph (c)(1)(E) would require a generation entity to determine the minimum design temperature, minimum operating temperature, and other operating limitations based on temperature, precipitation, humidity, wind speed, and wind direction.

Calpine, Cities, TPPA, TCPA, LCRA, and Exelon stated that this provision does not specify an engineering standard to reference. Accordingly, they suggested a generation entity should be permitted to rely on operational history because a generation entity may have had operational experiences that diverge significantly from the resource's original design criteria. These commenters requested flexibility to base their resources' operating limitations on the lowest temperatures experienced by that resource.

Commission Response

The commission accepts the recommendation that a generation resource's operational limitations may be determined using operational history. Such operational history takes into account the February 2011 and 2021 winter events, which would be consistent with the legislative intent to take prior recent events into account in this rule. The commission, therefore, revises the rule accordingly.

Enbridge and APA/ACP requested the commission allow a generation entity to select which design and operating conditions are relevant to a specific resource and provide that data to the commission because not all ambient conditions apply to all resource types and technologies. Both parties presented changes to provide this flexibility.

Commission Response

The commission declines to adopt Enbridge's and APA/ACP's recommendation to allow a generation entity discretion to choose which conditions are relevant to a specific generation resource. Reporting and review of design and operating limitation criteria are specific recommendations from the 2012 Quanta Report. The reported design and operating criteria do not impose a particular set of weather emergency preparation measures the entity must take. If particular conditions are not impactful on a particular generation resource, then the generation entity does not need to prepare for those conditions.

TEC suggested adding a new requirement to subsection (c)(1) that would require a generation entity to identify certain weather preparation measures that must be taken just in advance of a season or a predicted storm in order not to impact the resource's ability to maximize output of energy in other seasons.

Commission Response

Given that the focus of this rulemaking project is on the 2021-2022 winter weather season, the commission declines to add such a provision to the rule. However, the commission may consider TEC's recommendation in a future rulemaking project related to phase two weatherization standards.

Paragraph (c)(2), Generation Entity Winter Weather Readiness Report

The proposed paragraph would require that a winter weather readiness report with an attestation be submitted on a form prescribed by ERCOT and developed in consultation with commission staff. TPPA and Vistra requested an opportunity for stakeholder input into the development of the form. Capital Power requested that the form be specific to generator type to avoid confusion.

Commission Response

Given that the focus of this rulemaking project is on the 2021-2022 winter weather season, the commission declines to add a period of stakeholder review into the development of the winter weather readiness report form. Use of a form does not prevent a generation entity from including information that it considers relevant in its report.

The proposed paragraph would also require that a winter weather readiness report include a notarized attestation. Calpine, Enbridge, Exelon, Savion, TCPA, TIEC, and TPPA requested changes to the requirement that the attestation be sworn to by an officer of the generation entity with responsibility for the resource's operations. TCPA, Calpine, and Exelon each claimed that in corporations with multiple generation entity affiliates it may be difficult to determine which office is the highest-ranking representative. Similarly, TPPA noted that municipally owned utilities might be required to obtain the attestation of the city manager, mayor or city council.

Commission Response

The commission declines to make the requested changes. Given the importance of the information addressed in the winter readiness report, the commission is requiring that the entity's highest-ranking representative, official, or officer with binding authority over the generation entity attest to the preparation measures conducted by the generation entity. With respect to the TPPA's request for clarification, the commission recognizes that the organizational structure of municipally owned utilities may vary and that a local government official or city council may be the highest-ranking authority for the generation entity. The commission clarifies that the rule does not require a resolution from an elected body or an attestation from an elected official to fulfill this rule requirement. The commission encourages each municipally owned utility to make a good faith effort to identify the appropriate person to provide the attestation.

With respect to the language in paragraph (c)(2), TEC stated that, because the activities identified in paragraph (c)(1) should not be exhaustive, may not be completed by the time of inspection (if the measures are seasonal or temporary in nature), or may be subject to a good cause exception, it would be more appropriate to attest to the actions taken "pursuant to" paragraph (c)(1) rather than describing activities taken "to complete" the requirements of paragraph (c)(1).

Commission Response

The commission declines to use the words "pursuant to" as suggested by TEC, because the word "complete" best describes the state of the best effort activities a generation entity is required to meet under paragraph (c)(1) when filing its winter weather readiness report. However, the commission revises subparagraph (c)(2)(B) to reflect in the attestation that a generation entity may request a good cause exception under paragraph (c)(6).

Paragraph (c)(3), ERCOT Inspection Checklist Form

The proposed paragraph would require ERCOT to develop a comprehensive checklist form.

Vistra and TCPA requested an opportunity for stakeholder input into the creation of the form and Capital Power requested an opportunity to review resource-specific forms before compliance is required. Specifically, TCPA and Vistra requested an opportunity to better understand the form to be able to provide feedback to ERCOT that would ensure information in the form was communicated clearly.

Commission Response

The commission declines to revise the rule in response to these comments. The development of an inspection checklist form is for the benefit of ERCOT's inspectors and is intended to provide information to the commission about ERCOT-conducted inspections. The commission has not included this requirement in the rule to give generation entities advance information on what ERCOT's inspectors may be specifically inspecting at the generation resource. Generation entities need to comprehensively prepare their generation facilities for weather emergencies instead of focusing on preparing specific components in anticipation of their inspection by ERCOT. Furthermore, in the development of its checklist form, ERCOT is necessarily limited to the standards in subparagraph (c)(1). However, the commission revises the rule to allow more than one checklist form to be used by ERCOT, since ERCOT's inspectors may need different checklist forms depending on such factors as the type of generation resource being inspected.

Calpine requested deletion of the reference to subsystems based on its assertion that the reference is duplicative and ambiguous.

Commission Response

The commission declines to adopt Calpine's recommendation to delete the reference to subsystems. The reference is appropriate to highlight the necessity of inspecting subsystems because a subsystem that malfunctions can have a significant impact on the operation of a generation resource.

Paragraph (c)(4), ERCOT Report on Generation Entity Winter Weather Readiness Report

The proposed paragraph would require ERCOT to file with the commission no later than December 10, 2021 a summary of the winter weather readiness reports filed under paragraph (c)(2) that addresses compliance of the generation entities with paragraphs (c)(1) and (2). Vistra and TCPA requested that the provision give a generation entity a reasonable period to appeal any determination of non-compliance reflected in ERCOT's report and to cure any identified deficiencies described in the report. TPPA asserted that the ERCOT report should be considered an inspection because of the proposed requirement that it address generation entities' compliance with paragraph (c)(1).

Commission Response

Because ERCOT will have only ten days to prepare and file this winter readiness report, the commission revises the rule provision to require a compliance report that addresses whether each generation entity submitted the report required by paragraph (c)(2) for each generation resource under the generation entity's control and whether the generation entity submitted a notice asserting good cause for noncompliance under paragraph (c)(6). This rule revision makes moot TPPA's assertion and Vis-

tra's request for an appeals process for an ERCOT determination in the report of noncompliance with paragraph (c)(1).

Calpine requested a January 15, 2022 deadline for ERCOT's report rather than the December 10, 2021 deadline in the proposed rule, arguing that the proposed deadline may not give ERCOT sufficient time.

Commission Response

The commission declines to make this change, because it has streamlined the requirements of what ERCOT must communicate in its December 10, 2021 report. Given the rule revision stated in the previous response, the commission finds there is sufficient time for ERCOT to prepare and submit the required winter readiness report by December 10, 2021.

Paragraph (c)(6), Good Cause Exception

The proposed paragraph would permit a generation entity to assert good cause for noncompliance with the specific requirements in paragraph (c)(1).

TPPA stated that good cause exceptions should be granted as a matter of enforcement discretion rather than in a contested case.

Commission Response

The commission accept TPPA's recommendation to eliminate the requirement for a contested case proceeding for a good cause exception to weather emergency preparation measures required in paragraph (c)(1). Although a contested case proceeding may provide additional transparency and formality to the review of a requested good cause exception, there are some types of good cause assertions that should not require a commission hearing, such as documented supply chain delays, that are likely to be resolved in a matter of days or weeks.

Instead of a mandatory contested case process, the commission concludes that assertions of good cause can initially be administered as enforcement investigations through which non-controversial requests can be efficiently reviewed and resolved and more complex, contentious issues can be addressed through a settlement process between the parties or the formal contested case process. The commission, therefore, revises paragraph (c)(6) accordingly.

Capital Power noted the lack of a deadline to request a good cause exception, and AARP requested a deadline for a good cause exception request and the notice to ERCOT of the request, and specifically requested that the deadline be before December 1, 2021, the date that a generation entity's winter weather readiness report is due. OPUC requested a process for reviewing a good cause exception, with a reasonable timeline for stakeholder comment.

Commission Response

The commission revises the rule provision to impose a December 1, 2021 deadline, the same date that a generation entity's winter weather readiness report is due under paragraph (c)(2). The commission declines to adopt OPUC's recommendation to add to the rule details of the review process for a request for good cause exception. The specifics of the review process should be addressed on a case-by-case basis, like all enforcement investigations are handled by the commission.

Enbridge requested a predetermination of good cause where the generation entity confirms that it is dependent on the equipment manufacturer for related preparations and the manufacturer confirms it cannot make the December 1, 2021 deadline. Enbridge

also requested further detail on what documentation is required for a request for good cause exception.

Commission Response

The commission declines to make changes in response to Enbridge's requests. A determination of good cause may depend on the specific facts of the request and the provision is sufficiently specific with respect to required documentation given that the basis for a good cause exception may depend on the specific facts of a request.

LCRA requested clarification that a good cause exception request is not required to avoid redesign or reconstruction of a resource.

Commission Response

The commission makes no change to this provision in response to LCRA's request for the reasons addressed in its response to comments on subparagraph (c)(1)(c).

TIEC requested clarification that a good cause exception could allow a permanent exception to the requirements of paragraph (c)(1).

Commission Response

The commission clarifies clause (c)(6)(A)(iii)'s reference to a proposed compliance deadline for a request for a permanent exception.

AARP stated that an applicant for a good cause exception should be required to demonstrate it made every effort to meet the deadline; financial or cost considerations should not be sufficient to justify a good cause exception. In addition, AARP requested a limit on the maximum delay in meeting the weatherization deadline. AARP stated that delays should be short-lived and anything beyond a reasonable short period (e.g., 30 days) should be re-justified if allowed at all.

Commission Response

The commission agrees with AARP that the standard for a good cause exception should be high, and the commission intends to apply the standard accordingly. The commission declines to include specific maximum time limits in the rule as suggested by AARP. The justification for a good cause exception may often be fact specific and a compliance deadline must account for those specific factual circumstances.

OPUC requested a revision to ensure that specified consequences and penalties will be imposed by the commission, unless a good cause exception granted.

Commission Response

The commission declines to detail specific consequences and penalties for noncompliance under paragraph (c)(1). 16 TAC §25.8 (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers) establishes a classification system for the assessment of administrative penalties. This assessment is fact-intensive and is therefore best made in response to an actual violation as part of an enforcement investigation by the commission.

Paragraph (d)(1), ERCOT Inspection of Generation Resources

This paragraph would require ERCOT to inspect generation resources.

Oncor Cities requested that the commission require the inspections be conducted on-site by qualified, full-time ERCOT inspec-

tors or by inspectors employed by another qualified entity selected by the commission and ERCOT. Oncor Cities also requested that ERCOT present a plan for hiring and training inspectors. Finally, Oncor Cities requested that ERCOT establish a mandatory inspection schedule to which it must adhere.

Commission Response

The commission declines to adopt the changes proposed by Oncor Cities. The commission determines that ERCOT can suitably use its expertise and industry insights to determine how best to schedule and conduct inspections of generation resources. ERCOT's plans to engage full-time inspection staff and supplemental outside contractors are best determined by ERCOT.

Oncor Cities expressed concern about ERCOT's ability to both conduct inspections and maintain focus on its other critical core functions.

Commission Response

Oncor Cities' concerns about ERCOT's other critical core functions are beyond the scope of this rulemaking project, which is focused on developing weather emergency preparation measures and reliability standards for generation resources and transmission facilities.

ERCOT Prioritization of Inspections Based on Risk Level

This paragraph would require ERCOT to prioritize its inspection schedule based on risk level.

TAEBA stated that the commission should define the term risk level and clarify whether ERCOT's pre-inspection risk level assessment of generators will be publicly available and how often ERCOT will be required to update its assessment to reflect measures taken by generators to enhance reliability. Enel similarly requested clarification of the risk level ERCOT will use.

Commission Response

The commission declines to define the term risk level. The rule enumerates several characteristics of risk to grid reliability upon which ERCOT may determine how to effectively prioritize its inspections. Moreover, due to security concerns, ERCOT will not publicly post whether the loss of generating capacity at a particular generation resource presents a reliability risk.

As explained in the discussion of the definition of inspection in paragraph (b)(5) of the rule, the commission moves the provision that requires ERCOT to determine the number, extent, and content of inspections in consultation with the commission to this paragraph (d)(1) as well as paragraph (g)(1). To address the discussion in paragraph (b)(5) related to physical security of generation resources to be inspected, the commission revises the rule to require ERCOT to notify a generation entity of an upcoming inspection, ensure ERCOT's inspectors have access to the generation resource to be inspected, and permit a generation entity to escort ERCOT's inspectors while they are on site.

The commission also replaces "extreme weather conditions" with "weather emergency conditions" to make this requirement consistent with the overarching context of the requirements in paragraph (c)(1).

Paragraph (d)(2), ERCOT Inspection Report

The proposed paragraph would require an inspection report and require actions to be taken for deficiencies that are identified in the report.

TPPA requested that the inspection report be provided in writing so that a generation entity will have complete information regarding the results of the inspection.

Commission Response

The commission declines to adjust the rule to require that the inspection report be provided in writing because doing so would unnecessarily limit the manner in which an inspection assessment may be provided most efficiently to the generation entity. In some instances, it may be most effective for ERCOT to provide immediate feedback to the generation entity at the time of the inspection. In other instances, a more detailed, written report should be provided to the generation entity. Given the timeframe for the winter 2021-2022 inspections, the commission is unwilling to hinder ERCOT's ability to provide important timely feedback.

Proposed paragraph (d)(2) would also require ERCOT to provide a reasonable period of time to a generation entity to cure deficiencies identified in an inspection report before any enforcement investigation can be taken. TEC requested that the commission add cost as one of the specific factors that ERCOT would use to determine an appropriate cure period.

Commission Response

The commission disagrees with TEC's proposal and declines to add cost to the list of factors ERCOT must consider when determining an appropriate cure period. Both the rule and PURA require ERCOT to provide a reasonable time period for generation entities to resolve noted deficiencies, and the rule requires ERCOT to consider the complexity of weather emergency preparation measures when it determines an appropriate cure period. The cost of a given measure is not necessarily correlated with the amount of time the solution may take to implement.

TPPA, TEC, TCPA, and Calpine each requested that the commission entitle a generation entity to an appeal of ERCOT's determination of noncompliance and to be able to dispute the time period specified by ERCOT to remedy the deficiencies. Calpine also intimated that, because the rule is new and its interpretation will likely evolve over the coming months, a generation entity should be allowed to dispute ERCOT's findings, especially because the commission is able to apply a \$1 million per day enforcement penalty for noncompliance.

Commission Response

The commission declines to change the rule to allow a generation entity to appeal ERCOT's determination of deficiencies or the amount of time specified by ERCOT to remedy deficiencies. The rule requires ERCOT to communicate its determination of noncompliance directly to a generation entity, and a noncompliant generation entity will have a reasonable amount of time to cure the deficiencies. The commission does revise the rule provision to allow a generation entity the opportunity to request a different amount of time to remedy deficiencies. Any such request, however, must be supported by documentation that justifies the different amount of time requested to cure the deficiency. The commission also notes that, although PURA §35.0021(g) requires the commission to impose an administrative penalty on a generation entity that has not cured its noncompliance within a reasonable amount of time, the amount of the administrative penalty will be determined through the commission's enforcement process subject to PURA §15.023, which provides an entity with the opportunity to dispute an adverse finding through a contested case.

TPPA suggested that, as an alternative to an appeal process, the commission could clarify that §25.503(f)(2)(c) could be cited by a generation entity if ERCOT required a remedy within an unreasonable amount of time.

Commission Response

Section 25.503(f)(2) applies only to ERCOT procedures and protocols. §25.55 is not an ERCOT procedure or protocol. Therefore, a generation entity will not be excused from compliance with this rule simply by citing to §25.503(f)(2). The commission notes, however, that a generation entity is entitled to assert good cause for noncompliance with portions of this rule under paragraph (c)(6). Should a generation entity conclude that compliance with paragraph (c)(1) would jeopardize public health and safety or create risk of bodily harm or damage to equipment, for example, the generation entity can assert good cause for noncompliance or submit a request for a good cause exception. Further, it is the commission, not ERCOT, that ultimately determines whether the cure period was reasonable for enforcement purposes.

Proposed subsection (d)(2) would also require the cure period to be based on several factors, including ERCOT's determination of the risk of the resource's noncompliance to system reliability. Calpine commented that there are no metrics by which ERCOT must consider the "reliability risk of the resource's noncompliance" when determining an appropriate cure period, and therefore recommended the deletion of the clause from the rule.

Commission Response

The commission declines to adopt Calpine's recommendation to delete the clause, "the reliability risk of the resource's noncompliance" from the rule. The rule's entire focus is on mitigating risks to the reliable operation of the ERCOT bulk power system during a weather emergency. ERCOT's experience operating the bulk power system enables it to determine what type of risk a generation resource's noncompliance would have on bulk power system reliability. Not considering the reliability risk caused by a generation resource's noncompliance with this rule would be to ignore a core component of SB 3. Moreover, the commission regularly takes reliability risk into account when assessing administrative penalties for violations of ERCOT Protocols and the commission's rules.

Subsection (e), Weather-Related Failures by a Generation Resource to Provide Service

Proposed subsection (e) would require a generation entity with a resource that experiences repeated or major weather-related forced interruptions of service to contract with an independent engineer to assess the entity's plans and preparations for weather events.

Calpine requested that the commission clarify the term "repeated" because it could refer to multiple occurrences of forced interruption of service in one season or to occurrences of forced interruptions of service over more than one season. Calpine recommended "repeated" should be understood to mean multiple occurrences in same season, yet then provided language that deleted the word "repeated" and replaced it with "multiple occurrences of the same failures in similar conditions over a period of three years."

Commission Response

The commission declines to revise the subsection as suggested by Calpine. The language "repeated or major weather-related

forced interruptions of service" is taken directly from PURA §35.0021 and should be understood to apply to recurring failures at a generation resource that result in a resource trip, deration, or failure to start. The commission, at this time, declines to define over what period of time a recurring failure at a generation resource would constitute a repeated forced interruption of service.

TEC suggested that the commission expanded the scope of the rule by including the term "maintenance-related outages" as a type of repeated or major weather-related forced interruptions of service contemplated by the statute. TEC's concern centered around the fact that maintenance outages are not necessarily indicative of a need for additional commission oversight. TEC then proposed to strike the entire clause "including forced outages, derates, or maintenance-related outages" from the subsection. Similarly, Enel requested the commission clarify that a resource on an outage that is necessary according to its operating plan should not be classified as a "weather-related failure."

Commission Response

TEC's and Enel's proposed revisions are too broad. Maintenance-related outages are not *always* a signal that additional oversight by the commission is needed, because a generation resource operator may try to take advantage of small windows of time over several days to fix multiple problems to keep the generation resource online when it is needed. In addition, as noted by Enel, certain types of generation resources are required to stop operating under more severe weather conditions; for example, wind generators cannot safely operate when wind speeds exceed a certain threshold.

However, if a generation entity must take repeated maintenance level outages at a generation resource due to a failure to adequately prepare the generation resource for winter weather operations, the repeated maintenance-level outage *is* a signal to the commission that more oversight is required. If a generation resource is taking an outage for reasons beyond maintaining safe operating practices, additional commission oversight may be required. Moreover, TEC's exclusion of "forced outages" and "derates" suggests a desire to narrow the scope of the rule. Therefore, the commission revises the subsection by changing the word "including" to "such as" to demonstrate that forced outages, derates, and maintenance-level outages are examples of forced interruptions of service that may require a generation entity to engage an independent assessment of its generation resource.

Proposed subsection (e) would also require the engagement of an independent engineer who is not affiliated with the generation entity and has not participated in a previous assessment under this rule of one of the entity's resources.

Many commenters opposed excluding professional engineers who had participated in previous assessments of a resource experiencing repeated or major weather-related forced interruptions of service from conducting such an assessment again. TPPA, TEC, LCRA, Exelon, and Calpine each urged the commission to delete this prohibition because of a perceived limited pool of qualified and available engineers. LCRA further stated that the proposed restriction also imposed an unlawful restraint of trade.

Commission Response

The commission agrees with the commenters that the proposed limitation may result in unintentional difficulties to find qualified, independent engineers. However, it is important that generation

entities use independent, unaffiliated engineers to conduct these inspections. Therefore, the commission revises the rule to prohibit the use of the same engineer more than once every five years, unless the generation entity can show that there are no other qualified, independent engineers reasonably available for engagement. Limiting the number of times an engineer can provide an independent assessment would not represent a restraint on free trade. The restriction imposed by subsection (e) is not for the benefit of one private party over another; rather, it is in the public's interest to ensure an engineer can assess generation resource readiness free from undue pressures of the generation entity and bias.

Proposed subsection (e) would also require ERCOT to adopt rules that implement this subsection. TAEBA, Exelon, and TCPA each requested clarification of the scope of and process ERCOT will use to adopt rules that implement this subsection. Specifically, Exelon wanted the scope of the ERCOT rule to consider whether it would be appropriate to require a wind generation entity to engage an independent consultant for repeated forced outages related to icing on turbine blades. Also, TCPA and TAEBA sought clarification of whether the rule adoption process will be open to the public or follow the traditional ERCOT market participant stakeholder procedures.

Commission Response

Currently, all ERCOT rules are adopted through an extensive stakeholder process, which provides multiple opportunities for market participants and other interested entities to provide ideas, submit feedback, and help shape market and reliability rules. The commission expects the rules required under subsection (e) to be adopted under the existing procedures or as amended by the ERCOT board of directors. In addition, all ERCOT protocols must be approved by the commission before becoming effective. The commission declines to prejudge the validity of including any specific type of component failure in the determination of whether repeated or major weather-related forced interruptions of service have occurred.

TPPA requested the commission clarify that the obligation of a generation entity to contract with a third-party qualified engineer to assess the entity's preparation measures, plans, procedures, and operations applies only after ERCOT adopts rules implementing this subsection (e).

Commission Response

The commission declines to delay the effective date of this rule provision, as requested by TPPA, until after ERCOT has adopted rules implementing subsection (e). PURA §35.0021(d) obligates the commission *by rule* to require a generation entity to contract with an independent person to assess the generation entity's preparations, plans, procedures, and operations. The commission expects ERCOT to adopt the rules necessary to implement this section in a timely fashion. However, the commission requires the assessment be conducted by an independent professional engineer, which should ensure that any assessments conducted prior to the adoption of rules by ERCOT are still meaningful.

TAEBA requested clarification of the conditions under which generation resources would be subject to additional inspections by ERCOT under subsection (e).

Commission Response

The commission declines to change the rule in response to this comment. Upon review of an independent engineer's genera-

tion resource assessment, ERCOT and the commission have discretion to consider the specific circumstances in determining whether the corrective actions taken by a generation entity to resolve the causes of a generation resource's repeated failures or major weather-related failures require additional scrutiny to ensure that the failures are unlikely to occur again under similar circumstances. Such additional inspections will adhere to the rules delineated in subsection (d).

Proposed subsection (e) would also require ERCOT to refer to the commission for investigation a generation entity that has violated the rule.

TEC and Texas Solar Power Association each requested clarification on the referral of violations of the rule. TEC requested the commission refine subsection (e) to clarify that ERCOT will only refer violations of this rule to the commission for enforcement of material deficiencies based on the independent engineer's assessment. TSPA requested clarity about what constitutes a reasonable period of time for a generation entity to cure a violation.

Commission Response

The commission declines to adopt TEC's recommendation to limit ERCOT referrals of violations only to material deficiencies. PURA §35.0021(c)(3) specifically requires ERCOT to report any violation of the rules adopted under this statute. Additionally, PURA §35.0021(g) requires the commission to impose an administrative penalty on a generation entity that violates these rules after giving the entity a reasonable opportunity to remedy the violation. The statutory requirements are clear, and the rule incorporates several opportunities for a generation entity to engage with ERCOT and the commission to correct a violation before enforcement action is taken by the commission.

The commission also declines to further define what constitutes a reasonable period of time to cure violations under this provision. Like with paragraph (d)(2), the commission retains its discretion to determine a compliance investigation process that allows ERCOT, the generation entity, and the commission the opportunity to engage in meaningful discussions about how best to quickly resolve violations of the rule.

Subsection (f), Weather Emergency Preparedness Reliability Standards for a Transmission Service Provider

Proposed subsection (f) would establish weather preparation requirements that a TSP must take in advance of the 2021-2022 winter weather season. Calpine requested that if the commission does not adopt its suggestion to delete the words "phase one" included in the heading of subsection (c), then the heading of subsection (f) should be modified to include "phase one."

Commission Response

The commission deleted "phase one" from the heading of subsection (c). Accordingly, the commission declines to add "phase one" to the heading for subsection (f).

Oncor requested the commission extend the deadline to comply with the requirements of paragraphs (f)(1) and (f)(2) to December 15, 2021. Oncor stated that the December 1, 2021 deadline creates tight timing challenges to conduct training and complete inspections. Oncor suggested the extended deadline would enhance the expected benefits of these requirements.

Commission Response

The commission declines to extend the deadline imposed in paragraphs (f)(1) and (f)(2). TSPs incapable of completing

the requirements are able to file a request for a good cause exception under paragraph (f)(2).

Paragraph (f)(1), Weather Emergency Preparation Measures

TNMP suggested adding the word "transmission" to clarify "its systems and facilities" in subsection (f)(1). Similarly, TEC suggested clarifying that the commission intended the systems and facilities identified through subsection (f)(1) to be those operated at transmission voltage. TEC requested the editing of subparagraphs (f)(1)(E), (f)(1)(F), and (f)(1)(H) to insert transmission voltage to describe certain components, systems, and equipment. Oncor requested clarification that the proposed rule applies to transmission-voltage switching stations and substations and not the distribution-voltage side of substations. AEP Companies requested clarification that winter weather emergency preparation measures enumerated throughout subsection (f)(1) apply only to high-voltage switching stations operating at or above 60 kilovolts.

Commission Response

The commission agrees with the commenters that the intent of subsection (f)(1) is to prepare components and equipment that operate at transmission level voltage. In paragraph (b)(1), the commission revises the definition of cold weather critical component applicable to TSPs to mean only transmission-voltage equipment located inside the fence surrounding a TSP's high-voltage switching station or substation. The commission finds additional revisions as recommended by the commenters above are not needed with this revised definition in place.

AEP Companies, TNMP, and Oncor stated that subparagraphs (A), (B), and (H) are not drawn directly from the 2011 FERC/NERC Report recommendations and should be deferred to phase two of the commission's weather preparedness rulemaking process where these provisions can be developed and discussed by stakeholders. CenterPoint stated that the requirements listed in subparagraphs (f)(1)(A), (f)(1)(B), (f)(1)(C), and (f)(1)(H) are not recommendations made in the 2011 FERC/NERC Report. Moreover, CenterPoint stated that these provisions are "too vague and ambitious for such quick implementation" and should be implemented in a future phase of the rulemaking.

Commission Response

The commission declines to remove the requested provisions from paragraph (f)(1), because these requirements are intended to prepare transmission systems to maintain service quality and reliability during the 2021-2022 winter weather season, in accordance with PURA §38.075. Exclusively addressing recommendations from the 2011 winter weather event would ignore lessons learned from the most recent 2021 winter weather event.

Sharyland commented that a "cold weather critical component" of a facility within a TSP's system that could freeze *and* likely result in a generation unit tripping, derating, or failing to start would include power transformers, high voltage circuit breakers, and certain specific elements within those components. Sharyland supported subparagraphs (f)(1)(A), (f)(1)(B), (f)(1)(C), and (f)(1)(H) assuming the inclusion of those components.

Commission Response

The commission revises the definition of cold weather critical component in paragraph (b)(1) rendering Sharyland's comments moot. The revised definition specifically addresses cold weather

critical components applicable to TSPs, in part, by removing references to generation resources.

Subparagraph (f)(1)(A), Preparation of Cold Weather Critical Components

TPPA and TNMP recommended the Commission clarify the definition of "sustained operation" in this provision to define the length of time a TSP is expected to ensure operation. LCRA TSC stated that the provision should be changed because it proposes to require a TSP to "ensure" a specific performance outcome, which is neither appropriate nor consistent. TEC proposed changes to reflect the preparation standard articulated in PURA §38.075 and to make explicit that actions must be reasonable and appropriate, in line with good utility practice.

Commission Response

The commission agrees with the commenters that the rule should impose a preparation standard on a TSP rather than a performance standard. The commission finds that the adjective "necessary" could be interpreted as requiring a certain level of performance and, thus, replaces it with "intended." To intend is to plan or to have something in mind as a purpose or goal. The use of "intended" should clarify that the rule is a preparation standard.

The commission requires a TSP to use its best efforts to meet the requirements specified throughout paragraph (f)(1). The commission changes "All actions" to "Best efforts" to reflect the preparation standard. The TSP must decide how best to comply with the requirements of this rule and further has the option to assert good cause for noncompliance.

The commission replaces "preparations" with the defined term "weather emergency preparation measures" to clarify its intent. Consistent with its discussion of the definition of weather emergency preparation measures with respect to proposed paragraph (b)(7), adopted paragraph (b)(8), the commission adds types of weather emergency preparation measures listed in proposed paragraph (b)(7) to subparagraph (f)(1)(A).

Finally, the commission declines to define the term "sustained operation" because the reliability standard in the rule provision pertains to the preparations taken in advance of operations, not the amount of time a transmission facility is capable of operating. Assuming the TSP can demonstrate it used best efforts intended to ensure sustained operation of the facility, the compliance standard should be met.

Subparagraph (f)(1)(C), Preventing Reoccurrence of Failures

The proposed subparagraph would require all actions necessary to address cold weather critical component failures that occurred under winter weather conditions in the period between November 30, 2020 and March 1, 2021.

Several commenters requested clarifications of subparagraph (f)(1)(C), claiming it is too broad. LCRA TSC stated that the proposed language "all actions necessary" transformed the rule into a performance standard, while CenterPoint recommended that the actions taken be "reasonable and prudent". CenterPoint also requested that the components be "owned and operated by the TSP." TPPA and TEC suggested that subparagraph (f)(1)(C) should be limited to failures that occurred directly due to winter weather, rather than one-off occurrences unrelated to cold weather operations. AEP Companies recommended that the provision apply only to circuit breaker or transformer failures that occurred due to freezing temperatures in the designated period.

City of Houston stated that the provision should require a TSP to verify the need for the additional items; the estimated costs, expected benefits of the upgrades, and how this would have helped prevent any outages that occurred during Winter Storm Uri.

Commission Response

The commission agrees with the commenters that "all actions necessary" should be deleted and, consistent with its revision to subparagraph (c)(1)(C), the commission changes the phrase to "best efforts to." In addition, the commission agrees with commenters and revises subparagraph (c)(1)(C) to apply only to failures that occurred due to winter weather conditions between November 30, 2020 and March 1, 2021. However, the commission declines to limit the scope of the subparagraph to circuit breakers and transformers failures because other cold weather critical components during winter weather conditions are also cause for concern. The commission also declines to add "owned and operated by the TSP" as the commission has clarified the definition of cold weather critical component in paragraph (b)(1). The commission declines to require the verification requested City of Houston because a TSP is already required to prove the reasonableness of costs it seeks to recover in transmission rates.

Subparagraph (f)(1)(D), Training

Oncor Cities stated that the lack of standards contained in the subparagraph could leave the rule open to broad interpretation. TNMP proposed either replacing "winter weather preparation" with "load shed procedure training" or adding the new term to the subsection to more closely align with the 2011 FERC Winter Report. AEP Companies requested the commission not add any new training requirements in advance of the 2021-2022 winter weather season. In the alternative, AEP Companies stated that the training should focus on weather emergency preparation measures. CenterPoint recommended adding "including load shedding procedures" to the proposed language.

Commission Response

The commission revises subparagraph (f)(1)(D) to mirror revisions to subparagraph (c)(1)(D). The commission declines to adopt Oncor Cities' recommendation and notes the training programs must be flexible enough to meet facility-specific operational guidelines and weather preparations. The commission also declines to add a new term or change the rule to specify the training requirement should be focused on load shed procedures. There are many preparations TSPs will need to take to get ready for the upcoming winter weather season, and the commission declines to specify particular types of training requirements.

Subparagraph (f)(1)(E), SF6 Gas Breakers and Metering

TPPA requested the commission clarify that these requirements only apply to existing installations that use sulfur hexafluoride gas and should not be interpreted as an instruction that existing transmission breakers (or other equipment) that do not use sulfur hexafluoride gas be replaced with those that do. Oncor suggested that it would be more effective to inspect the items listed closer to the expected cold weather temperatures or other winter weather emergency.

Commission Response

As noted above, the commission changes subparagraph (f)(1)(A) by deleting "all actions" and instead requiring TSPs to use their "best efforts" to address the failures of cold weather

critical components. A TSP must decide how best to comply with the requirements of this rule using its expertise and professional judgment; therefore, the commission declines to make the change recommended by TPPA. However, the commission replaces "extreme cold weather" with "winter weather emergency" to make this requirement consistent with the overarching requirements of paragraph (f)(1).

AEP Companies and CenterPoint recommended correcting a typographical error, replacing "by" with "and" to align with the 2011 FERC/NERC Report recommendation regarding SF6 gas in breakers, while Sharyland would prefer using "including."

Commission Response

The commission accepts AEP Companies and CenterPoint's recommendation and revises the rule accordingly. The commission declines to adopt Sharyland's recommendation in favor of the recommendation provided by AEP Companies and CenterPoint.

Subsection (f)(1)(F), Operability of Power Transformers

CenterPoint recommended adding auto transformers to the list of equipment a TSP must verify are operable in cold temperatures. CenterPoint also suggested deleting "extreme" as a description of the type of cold weather in which transformers should be prepared to operate.

Commission Response

The commission accepts CenterPoint's recommendation to include auto transformers in the rule language because they should be covered by this provision. The commission also replaces "extreme cold temperatures" with "winter weather emergencies" to clarify the circumstances for preparation.

Proposed Subparagraph (f)(1)(G), Determination of Ambient Temperatures

Sharyland was unclear about the scope of a TSP's equipment addressed by the provision and suggested that an overly broad interpretation of the "equipment" could lead to irrational outcomes. TEC recommended deleting this subpart because of the ambiguity of "equipment" and the difficulty of confirming ambient temperatures outside operations in actual weather conditions. TEC also noted overlap in reporting requirements with subparagraph (f)(1)(H) in that both require determination of temperatures and operating limitations. TPPA requested clarification as to whether the commission wanted an independent analysis of the specifications or if providing manufacturer specifications would suffice. AEP Companies proposed revisions to track more closely to the 2011 FERC/NERC Report recommendations.

Commission Response

The commission agrees with TEC that subparagraph (f)(1)(G) overlaps with subparagraph (f)(1)(H) and notes that the analysis required to document ambient temperatures may require greater effort than can be achieved in this rulemaking project timeline. Therefore, the commission will accept minimum design temperatures or minimum experienced operating temperatures, and other operating limitations as specified in subparagraph 25.55(f)(1)(H). The commission, therefore, deletes proposed subparagraph (f)(1)(G) but may reconsider it in a future rulemaking project.

Proposed Subparagraph (f)(1)(H), Design and Operating Limitations

Oncor Cities requested specific standards be included and was unsure if the determination of limitations is intended to be based on manufacturing specifications or based on the operations experience of each specific resource. Sharyland supported allowing the TSP to determine limitations, which would likely be based on various design specifications from the numerous transmission standards or from the design criteria from the original equipment manufacturers. LCRA TSC suggested that the provision be modified such that TSPs could provide minimum design temperature, minimum operating temperatures, or other operating limitations. AEP Companies, Oncor, TNMP, and CenterPoint proposed addressing design, operating, and other limitations in phase two of the rulemaking.

Commission Response

The commission accepts these commenters' recommendation for a transmission facility's operational limitations to be determined using operational history. Such operational history includes the February 2011 and 2021 winter weather events and is consistent with the legislative aim to take recent prior events into account. The commission, therefore, revises the rule accordingly.

Paragraph (f)(2), Winter Weather Readiness Report

TEC requested a revision to paragraph (f)(2) to use the words "pursuant to" when describing activities to be reported in the attestation under paragraph (f)(1) rather than the word "to complete" because, according to TEC, those activities should not be exhaustive, may not be completed by the time of inspection (if the measures are seasonal or temporary in nature), or may be subject to a good cause exception.

Commission Response

The commission declines to use the words "pursuant to" as suggested by TEC, because the word "complete" best describes the state of the best effort activities a TSP is required to meet under paragraph (f)(1). However, the commission revises subparagraph (f)(2)(B) to reflect in the attestation that a TSP may request a good cause exception under paragraph (f)(4).

AEP Companies requested that "all activities" be replaced with "weather emergency preparation measures."

Commission Response

The commission declines to adopt AEP Companies' recommendation, because the use of "all activities" emphasizes the comprehensive nature of the requirement. The commission notes that "all activities" should be interpreted within the overall context of the rule and that a TSP will use appropriate professional judgment when using its best efforts to implement weather emergency preparation measures.

AEP Companies requested the winter weather readiness report include a summary sheet that confirms the TSP has completed the necessary preparation measures and a description of measures taken by the TSP. AEP requested these changes to ease the TSP's reporting and submission of the required information given the short timeline afforded to TSPs for complying with the reporting requirements.

Commission Response

The commission declines to make the recommended changes to the TSPs' winter weather readiness report. Like the TSPs, ERCOT has a short timeline to gather and analyze the TSPs' winter weather readiness reports. ERCOT is capable of developing a

comprehensive form that can be efficiently filled out by the TSPs. Finally, the form will be developed in consultation with commission staff, who will help ensure a balance of efficiency and completeness.

Paragraph (f)(3), ERCOT Compliance Report

AEP Companies requested deletion of the phrase "for all facilities subject to the requirements" as unnecessary.

Commission Response

The commission declines to make this change because the phrase emphasizes the requirement that the report be comprehensive. However, the commission revises this paragraph to make it consistent with revisions made to paragraph (c)(4).

Paragraph (f)(4), Good Cause Exception Request

CenterPoint requested a December 1, 2021 deadline for the submission of a request. CenterPoint also requested a revision to tie the detailed description and supporting documentation required by clause (f)(4)(A)(ii) to the requirement for which the good cause exception is requested rather than compliance more generally with paragraph (f)(1).

Commission Response

Consistent with CenterPoint's request and the revision to paragraph (c)(6), the commission revises the rule provision to impose a December 1, 2021 deadline for submission of a request for good cause exception. The commission also agrees with the requested revision to refer in clause (f)(4)(A)(ii) to the requirement for which the good cause exception is requested. In addition, the commission revises paragraph (f)(4) to make it consistent with the revisions to paragraph (c)(6) to provide for a streamlined process for good cause exceptions requests.

Subsection (g), Inspections for a Transmission Service Provider

Paragraph (g)(1), ERCOT Inspections

Proposed paragraph (g)(1) would require ERCOT to inspect the preparations of transmission systems and facilities ahead of the 2021-2022 winter weather season and requires ERCOT to prioritize inspections based on a risk assessment.

Oncor Cities recommended the commission require the inspections to be conducted on-site by qualified, full-time ERCOT inspectors or by inspectors employed by another qualified entity selected by the commission and ERCOT. Oncor Cities also requested ERCOT to present a plan for hiring and training inspectors. Finally, Oncor Cities proposed ERCOT establish a mandatory inspection schedule to which it must adhere.

Commission Response

The commission declines to adopt the changes proposed by Oncor Cities for the same reasons enumerated in its response to comments on paragraph (d)(1).

Oncor Cities expressed concern about ERCOT's ability to both conduct inspections and maintain focus on its other critical core functions.

Commission Response

Oncor Cities' concerns about ERCOT's other critical core functions are beyond the scope of this rulemaking project, which is focused on developing weather emergency preparation measures and reliability standards for generation resources and transmission facilities.

AEP companies requested ERCOT be required to provide sufficient notice to a TSP of a physical inspection of a substation to ensure the TSP can arrange safety escorts.

Commission Response

The commission revises the rule to require ERCOT to provide at least 48 hours' notice so that a TSP can make necessary safety and security arrangements. In order to remain consistent with the discussion in paragraph (b)(5) related to the physical security of facilities to be inspected by ERCOT, the commission also revises the rule to ensure ERCOT's inspectors have access to the facility, and permit TSPs to escort ERCOT's inspectors while they are on site.

TPPA, TEC, and Oncor each recommended changes that would limit inspections to transmission voltage equipment owned and operated by a TSP. All three commenters noted that as proposed the rule could be interpreted to require inspection of a TSP's entire system, both inside and outside a substation fence line and including hundreds to thousands of miles of transmission line. TPPA specifically cited the extensive cost and logistical challenge of such a broad interpretation of the rule.

TAEBA's comments presumed ERCOT will inspect thousands of miles of transmission lines and TAEBA advised the commission that artificial intelligence and risk management software can aid in the identification of potential problems areas in the transmission system to help establish a prioritization scheme for the inspection schedule.

Commission Response

The commission adds clarifying language to paragraph (g)(1) instead of adding a new paragraph to limit the scope of ERCOT's inspections of a TSP's facilities within the fence surrounding a TSP's high-voltage switching station or substation.

Because the scope of the rule is being clarified to require inspection only of inside-station-fence facilities, TAEBA's comments are moot.

The commission replaces "extreme weather conditions" with "weather emergency conditions" to make this requirement consistent with the overarching context of subsection (f).

Subsection (g)(2), ERCOT Inspection Report

Proposed paragraph (g)(2) would require ERCOT to report on its inspections of transmission facilities, identify compliance deficiencies to the TSP, and provide a reasonable period of time for the TSP to remedy the deficiencies.

City of Houston commented that ERCOT should be required to identify all TSP weatherization projects that will not be completed prior to the beginning of the 2021-2022 winter weather season. City of Houston stated that this information would be helpful for the commission's report to the legislature on weather emergency preparedness, required under PURA §186.007.

Commission Response

The commission finds that additional reporting is not required to meet the requirements of PURA §38.075. The weather emergency preparedness report is not within the scope of this rule and is being considered under Project Number 51841. Additionally, under subsection (h), ERCOT must report to the commission any TSP that violates the rule.

As discussed in its comments on proposed paragraph (d)(2), TEC recommended ERCOT be explicitly required to consider

both cost and time when determining a cure period for a TSP to remedy deficiencies identified in its inspections. CenterPoint requested ERCOT consider all relevant facts and circumstances when determining a cure period and provided a non-exhaustive list of examples.

Commission Response

The commission declines to add to the list of factors that ERCOT must consider when determining an appropriate cure period. Both the rule and PURA require ERCOT to provide a reasonable time period for an entity to remedy noted deficiencies, and the rule requires ERCOT to consider the complexity of the weather emergency preparation measures when it determines an appropriate cure period. The word "must" in this directive requires ERCOT to consider each of the factors described in the rule but does not indicate that these factors are the only factors ERCOT is allowed to consider when evaluating an appropriate cure period.

TPPA, TEC, and CenterPoint each requested the commission entitle a TSP to an appeal of ERCOT's determination of a cure period to remedy the identified deficiencies. The appeal process, according to these commenters, would ensure the TSP and commission have an opportunity to address the reasonableness of the cure period. Similarly, TNMP and CenterPoint recommended the commission allow ERCOT to consider any reasonable factors that may affect a TSP's ability to remedy a deficiency.

Commission Response

The rule requires ERCOT to communicate its determination of noncompliance directly to the TSP, and a noncompliant TSP will have a reasonable amount of time to cure the deficiencies. The commission accepts TNMP's and CenterPoint's recommendations that consideration of the logistics of remedying a deficiency should be part of ERCOT's process to determine a reasonable cure period. The commission revises the rule provision to allow a TSP the opportunity to ask for a different amount of time to remedy deficiencies. Any such request must be supported by documentation to justify the additional time needed to cure a deficiency. However, the commission declines to add a specific appeals process consistent with paragraph (c)(4).

TPPA suggested that, as an alternative to an appeal process, the commission could clarify that §25.503(f)(2)(c) could be cited by a TSP if ERCOT required a remedy within an unreasonable amount of time.

Commission Response

For the same reasons cited in its response to TPPA's identical comment in subsection (d)(2), the commission determines that §25.503(f)(2) does not apply to instructions issued by ERCOT under this rule.

Proposed paragraph (g)(2) would require ERCOT to provide a report on its inspection of transmission facilities. TPPA requested the inspection report be provided in writing so that a TSP will have complete information regarding the results of the inspection.

Commission Response

The commission declines to change the rule to require the report be provided in writing because it would unnecessarily limit the manner in which ERCOT's inspection assessment may be provided most efficiently to the TSP. In some instances, it may be most effective for ERCOT to provide immediate feedback to the TSP at the time of the assessment. In other instances, a

more detailed, written report should be provided to a TSP. Given the timeframe for the 2021-2022 winter weather season inspections, the commission is unwilling to hinder ERCOT's ability to provide important timely feedback.

Subsection (h), Weather-Related Failures by a Transmission Service Provider to Provide Service

Proposed subsection (h) would require a TSP with a facility that experiences repeated or major weather-related forced interruptions of service to contract with an independent engineer to assess the entity plans and preparations for weather events. The proposed subsection would also require ERCOT to adopt rules that specify the circumstances for which this requirement applies and specify the scope and contents of the assessment.

TNMP, AEP Companies, and CenterPoint each recommended the commission remove subsection (h) from the rule and reconsider it during a future rulemaking phase. TNMP stated that without more specific scoping and implementation rules adopted through the ERCOT stakeholder process, the subsection could require a TSP to contract with an independent engineer for any weather-related outage. AEP Companies also stated that more deliberation about the scope of the independent engineer reports is warranted. In the alternative, however, AEP Companies and CenterPoint recommended the commission clarify which rules would be subject to referral to the commission for enforcement. CenterPoint declared the subsection to be impractical and unreasonable because the rule did not provide any principles to guide ERCOT in exercising the requirement to adopt rules implementing this subsection.

Commission Response

Currently, all ERCOT rules are adopted through an extensive stakeholder process, which provides multiple opportunities for market participants and other interested parties to provide ideas, submit feedback, and help shape market and reliability rules. The commission expects the rules required under subsection (h) to be adopted under the existing procedures or as amended by the ERCOT board of directors. In addition, all ERCOT protocols must be approved by the commission before becoming effective. The commission declines to prejudge the validity of including any specific type of component failure in the determination of whether repeated or major weather-related forced interruptions of service have occurred.

Additionally, PURA §38.075(d) requires the commission to impose an administrative penalty on a TSP that violates these rules after giving the TSP a reasonable opportunity to remedy the violation. The statutory requirements are clear, and the rules incorporate several opportunities for a TSP to engage with ERCOT and the commission to correct a violation before any enforcement action is taken by the commission.

Finally, the commission recognizes that CenterPoint's comments were written with the understanding that its entire transmission system would be subject to ERCOT's inspection under subsection (g)(1). With the clarification that the requirements enumerated in subsection (f) are limited to transmission-voltage facilities within a station controlled by a TSP, the compliance inspections under subsection (g) will be limited to the same facilities. Therefore, the commission finds that the requirements imposed under subsection (h) are neither impractical nor unreasonable.

However, the commission refines the subsection to eliminate terms more suited for the evaluation of generation resources.

TEC and LCRA TSC alternatively stated that subsection (h) should be eliminated from the rule because PURA §38.075 does not contain language that authorizes the commission to require the hiring of an independent engineer to assess facilities that have experienced repeated or major weather-related forced outages. In fact, LCRA TSC claimed that subsection (h) is contrary to the plain language of the statute.

Commission Response

The commission disagrees with TEC and LCRA TSC. Although PURA §38.075 does not contain the specific language requiring the engagement of independent engineers, PURA §38.005(f) does provide the commission with broad authority to compel TSPs to adhere to operational criteria established by ERCOT or adopted by the commission. Additionally, PURA §39.151(i) allows the commission to delegate authority to ERCOT to enforce operating standards within the ERCOT power region. The requirement to engage an independent consultant to provide a third-party review of preparations taken at a transmission-voltage station is focused on the core components of SB 3, namely mitigating risks to the reliable operation of ERCOT's bulk power system during a weather emergency. When repeated failures of equipment inside a station affect reliable operations, it is within the public interest to require additional analyses that could provide meaningful remediation strategies. Accordingly, the commission declines to delete subsection (h) from the rule.

Proposed subsection (h) would require the engagement of an independent engineer who is not affiliated with the TSP and has not participated in a previous assessment under this rule of the TSP's system or facilities.

Many respondents opposed excluding professional engineers who had participated in previous assessments of the TSP's system or facilities experiencing repeated or major weather-related forced interruptions of service from conducting such an assessment again. TNMP, CenterPoint, and AEP Companies each stated that if the commission chooses to retain subsection (h), then it should delete this prohibition because of a perceived limited pool of qualified and available engineers.

Commission Response

The commission agrees with the commenters that the proposed limitation may result in unintentional difficulties to find qualified, independent engineers. However, it is important to the commission that TSPs use independent, unaffiliated engineers to conduct these inspections. Therefore, the commission revises the rule to prohibit use of the same engineer more than once every five years, unless the TSP can show there are no other qualified, independent engineers reasonably available for engagement.

Proposed subsection (h) would also require ERCOT to refer to the commission for enforcement a TSP that has violated the rule and failed to remedy the deficiency within a reasonable amount of time.

CenterPoint again requested deletion of subsection (h) because it does not explicitly detail each step to be taken in an enforcement proceeding under this rule. The City of Houston recommended the commission specify that penalties may be assessed against TSPs that fail to remedy deficiencies within the cure period.

Commission Response

As noted above, the commission finds that the inclusion of subsection (h) to be in the public interest. CenterPoint's assertion

that there is no visibility or certainty in the enforcement process is not persuasive. Like the other TSPs operating in the ERCOT power region, CenterPoint has experience with enforcement investigations conducted by commission staff and should understand well the discretionary nature of the process to find resolution to violations of a statute or commission rule. The commission notes that PURA §38.075(d) requires the commission to impose an administrative penalty on a TSP that violates the rule and fails to remedy the deficiency in a reasonable amount of time. The commission takes this obligation seriously and retains subsection (h) accordingly.

The commission similarly declines to change subsection (h) to provide that administrative penalties may be assessed in an enforcement action. PURA §38.075 requires the commission to assess administrative penalties in enforcement investigations brought under this rule. Changing the rule in the manner proposed would not provide any clarity as to how the statute is to be implemented by the commission.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this rule, the commission makes other minor modifications for the purpose of clarifying its intent.

Statutory authority

The section is adopted under Public Utility Regulatory Act (PURA), Tex. Util. Code §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §35.0021, which requires the commission to adopt rules that require each provider of electric generation service in the ERCOT power region to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency; and §38.075, which requires the commission to adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare its facilities to maintain service quality and reliability during a weather emergency.

Cross reference to statutes: PURA §14.001, §14.002, §35.0021, and §38.075.

§25.55. Weather Emergency Preparedness.

(a) Application. This section applies to the Electric Reliability Council of Texas, Inc. (ERCOT) and to generation entities and transmission service providers (TSPs) in the ERCOT power region. A generation resource with an ERCOT-approved notice of suspension of operations for the 2021-2022 winter weather season is not required to be in compliance under this section until it is returned to service.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Cold weather critical component--Any component that is susceptible to freezing or icing, the occurrence of which is likely to significantly hinder the ability of a resource or transmission system to function as intended and, for a generation entity, to lead to a trip, derate, or failure to start of a resource. For a TSP, cold weather critical component is limited to any transmission-voltage component within the fence surrounding a TSP's high-voltage switching station or substation.

(2) Energy storage resource--An energy storage system registered with ERCOT for the purpose of providing energy or ancillary services to the ERCOT grid and associated facilities controlled by the generation entity that are behind the system's point of interconnection, necessary for the operation of the system, and not part of a manufacturing process that is separate from the generation of electricity.

(3) Generation entity--An ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource.

(4) Generation resource--A generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource, as well as associated facilities controlled by the generation entity that are behind the generator's point of interconnection, necessary for the operation of the generator, and not part of a manufacturing process that is separate from the generation of electricity.

(5) Inspection--Activities that ERCOT engages in to determine whether a generation entity is in compliance with all or parts of subsection (c)(1) of this section or whether a TSP is in compliance with all or parts of subsection (f)(1) of this section. An inspection may include site visits; assessments of procedures; interviews; and review of information provided by a generation entity or TSP in response to a request by ERCOT, including review of evaluations conducted by the generation entity or TSP or its contractor.

(6) Resource--A generation resource or energy storage resource.

(7) Weather emergency--A situation resulting from weather conditions that produces significant risk for a TSP that firm load must be shed or a situation for which ERCOT provides advance notice to market participants involving weather-related risks to the ERCOT power region.

(8) Weather emergency preparation measures--Measures that a generation entity or TSP takes to support the function of a facility during a weather emergency.

(c) Weather emergency preparedness reliability standards for a generation entity.

(1) By December 1, 2021, a generation entity must complete the following winter weather emergency preparation measures for each resource under its control.

(A) Use best efforts to implement weather emergency preparation measures intended to ensure the sustained operation of all cold weather critical components during winter weather conditions, including weatherization, onsite fuel security, staffing plans, operational readiness, and structural preparations; secure sufficient chemicals, auxiliary fuels, and other materials; and personnel required to operate the resource;

(B) Install adequate wind breaks for resources susceptible to outages or derates caused by wind; enclose sensors for cold weather critical components; inspect thermal insulation for damage or degradation and repair damaged or degraded insulation; confirm the operability of instrument air moisture prevention systems; conduct maintenance of freeze protection components for all applicable equipment, including fuel delivery systems controlled by the generation entity, the failure of which could cause an outage or derate, and establish a schedule for testing of such freeze protection components on a monthly basis from November through March; and install monitoring systems for cold weather critical components, including circuitry providing freeze protection or preventing instrument air moisture;

(C) Use best efforts to address cold weather critical component failures that occurred because of winter weather conditions in the period between November 30, 2020, and March 1, 2021;

(D) Provide training on winter weather preparations and operations to relevant operational personnel; and

(E) Determine minimum design temperature or minimum experienced operating temperature, and other operating limitations based on temperature, precipitation, humidity, wind speed, and wind direction.

(2) By December 1, 2021, a generation entity must submit to the commission and ERCOT, on a form prescribed by ERCOT and developed in consultation with commission staff, a winter weather readiness report that:

(A) Describes all activities engaged in by the generation entity to complete the requirements of paragraph (1) of this subsection, including any assertions of good cause for noncompliance submitted under paragraph (6) of this subsection; and

(B) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all activities described in paragraph (1) of this subsection, subject to any notice of or request for good cause exception submitted under paragraph (6) of this subsection, and to the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(3) No later than December 10, 2021, ERCOT must file with the commission comprehensive checklist forms based on the requirements of paragraph (1) of this subsection that include checking systems and subsystems containing cold weather critical components. ERCOT must use a generation entity's winter weather readiness report submitted under paragraph (2) of this subsection to adapt the checklist to the inspections of the generation entity's resources.

(4) No later than December 10, 2021, ERCOT must file with the commission a compliance report that addresses whether each generation entity has submitted the winter weather readiness report required by paragraph (2) of this subsection for each resource under the generation entity's control and whether the generation entity submitted an assertion of good cause for noncompliance under paragraph (6) of this subsection.

(5) A generation entity that timely submits to ERCOT the winter weather readiness report required by paragraph (2) of this subsection is exempt, for the 2021 calendar year, from the requirement in Section 3.21(3) of the ERCOT Protocols that requires a generation entity to submit the Declaration of Completion of Generation Resource Winter Weatherization Preparations no earlier than November 1 and no later than December 1 of each year.

(6) Good cause exception. A generation entity may submit by December 1, 2021 a notice to the commission asserting good cause for noncompliance with specific requirements listed in paragraph (1) of this subsection. The notice must be submitted as part of the generation entity's winter readiness report under paragraph (2) of this subsection.

(A) A generation entity's notice must include:

(i) A succinct explanation and supporting documentation of the generation entity's inability to comply with a specific requirement of paragraph (1) of this subsection;

(ii) A succinct description and supporting documentation of the generation entity's efforts that have been made to comply with the paragraph (1) of this subsection;

(iii) A plan, with supporting documentation, to comply with each specific requirement of paragraph (1) of this subsection for which good cause is being asserted, unless good cause exists not to comply with the requirement on a permanent basis. A plan under this subparagraph must include a proposed compliance deadline for each requirement of paragraph (1) of this subsection for which the good cause for noncompliance is being asserted and proposed filing deadlines for the generation entity to provide the commission with updates on its compliance status.

(B) Commission staff will work with ERCOT to expeditiously review notices asserting good cause for noncompliance. Commission staff may notify a generation entity that it disagrees with the generation entity's assertion of good cause and will file the notification in the project in which the winter weather readiness reports are filed. In addition, ERCOT may evaluate the generation entity's assertion of good cause as part of an inspection of the generation entity's resources.

(C) To preserve a good cause exception, a generation entity must submit to the commission a request for approval of a good cause exception within seven days of receipt of commission staff's notice of disagreement with the generation entity's assertion.

(D) The commission may order a generation entity to submit a request for approval of good cause exception.

(E) A request for approval of good cause exception must contain the following:

(i) A detailed explanation and supporting documentation of the inability of the generation entity to comply with a specific requirement of paragraph (1) of this subsection;

(ii) A detailed description and supporting documentation of the efforts that have been made to comply with paragraph (1) of this subsection;

(iii) A plan, with supporting documentation, to comply with each specific requirement of paragraph (1) of this subsection for which the good cause exception is being requested, unless the generation entity is seeking a permanent exception to the requirement. A plan under this subparagraph must include a proposed compliance deadline for each requirement of paragraph (1) of this subsection for which the good cause exception is being requested and proposed filing deadlines for the generation entity to provide the commission with updates on its compliance status.

(iv) Proof that notice of the request has been provided to ERCOT; and

(v) A notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the accuracy and veracity of the information in the request.

(F) ERCOT is a required party in a proceeding initiated under subparagraph (E) of this paragraph. ERCOT must make a recommendation to the commission on the request by the deadline set forth by the presiding officer in the proceeding.

(d) ERCOT inspection of generation resources.

(1) ERCOT-conducted inspections. ERCOT must conduct inspections of resources for the 2021-2022 winter weather season and must prioritize its inspection schedule based on risk level. ERCOT may prioritize inspections based on factors such as whether a generation resource is critical for electric grid reliability; has experienced a forced outage, forced derate, or failure to start related to weather emergency conditions; or has other vulnerabilities related to weather emergency

conditions. ERCOT must determine, in consultation with commission staff, the number, extent, and content of inspections and may conduct inspections using both employees and contractors.

(A) ERCOT must provide each generation entity at least 48 hours' notice of an inspection unless otherwise agreed by the generation entity and ERCOT. Upon provision of the required notice, a generation entity must grant access to its facility to ERCOT and commission personnel, including an employee of a contractor designated by ERCOT or the commission to conduct, oversee, or observe the inspection.

(B) During the inspection, a generation entity must provide ERCOT and commission personnel access to any part of the facility upon request and must make the generation entity's staff available to answer questions. A generation entity may escort ERCOT and commission personnel at all times during an inspection. During the inspection, ERCOT or commission personnel may take photographs and video recordings of any part of the facility and may conduct interviews of facility personnel designated by the generation entity.

(2) ERCOT inspection report.

(A) ERCOT must provide a report on its inspection of a resource to the generation entity. The inspection report must address whether the generation entity has complied with the requirements in subsection (c)(1) of this section.

(B) If the generation entity has not complied with a requirement in subsection (c)(1) of this section, ERCOT must provide the generation entity a reasonable period to cure the identified deficiencies.

(i) The cure period determined by ERCOT must consider what weather emergency preparation measures the generation entity may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the resource's noncompliance, and the complexity of the measures needed to cure the deficiency.

(ii) The generation entity may request ERCOT determine a different amount of time to remedy the deficiencies. The request must be accompanied by documentation that supports the request for a different amount of time.

(iii) ERCOT, in consultation with commission staff, will determine the final cure period after considering a request for a different amount of time.

(C) ERCOT must report to commission staff any generation entity that does not remedy the deficiencies identified under subparagraph (A) of this paragraph within the cure period determined by ERCOT under subparagraph (B)(iii) of this paragraph.

(D) A generation entity reported by ERCOT to commission staff under subparagraph (C) of this paragraph will be subject to enforcement investigation under §22.246 (relating to Administrative Penalties) of this title.

(e) Weather-related failures by a generation entity to provide service. A generation entity with a resource that experiences repeated or major weather-related forced interruptions of service, such as forced outages, derates, or maintenance-related outages must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified professional engineer must not be an employee of the generation entity or its affiliate and must not have participated in previous assessments for the resource for at least five years, unless the generation entity can document that no other qualified professional engineers are reasonably available for engagement. The generation entity must submit the qualified professional engineer's assessment to the commission and ERCOT. ERCOT must adopt rules that specify the circumstances for which this

requirement applies and specify the scope and contents of the assessment. A generation entity to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to commission staff for investigation any generation entity that violates this rule.

(f) Weather emergency preparedness reliability standards for a TSP.

(1) By December 1, 2021, a TSP must complete the following winter weather preparations for its transmission system and facilities.

(A) Use best efforts to implement weather emergency preparation measures intended to ensure the sustained operation of all cold weather critical components during winter weather conditions, including weatherization, staffing plans, operational readiness, and structural preparations; secure sufficient chemicals, auxiliary fuels, and other materials; and personnel required to operate the transmission system and facilities;

(B) Confirm the ability of all systems and subsystems containing cold weather critical components required to ensure operation of each of the TSP's substations within the design and operating limitations addressed in subparagraph (G) of this paragraph;

(C) Use best efforts to address cold weather critical component failures that occurred because of winter weather conditions in the period between November 30, 2020 and March 1, 2021;

(D) Provide training on winter weather preparations and operations to relevant operational personnel;

(E) Confirm that the sulfur hexafluoride gas in breakers and metering and other electrical equipment is at the correct pressure and temperature to operate safely during winter weather emergencies, and perform annual maintenance that tests sulfur hexafluoride breaker heaters and supporting circuitry to assure that they are functional;

(F) Confirm the operability of power transformers and auto transformers in winter weather emergencies by:

(i) Checking heaters in the control cabinets;

(ii) Verifying that main tank oil levels are appropriate for actual oil temperature;

(iii) Checking bushing oil levels; and

(iv) Checking the nitrogen pressure, if necessary.

(G) Determine minimum design temperature or minimum experienced operating temperature, and other operating limitations based on temperature, precipitation, humidity, wind speed, and wind direction for facilities containing cold weather critical components.

(2) By December 1, 2021, a TSP must submit to the commission and ERCOT, on a form prescribed by ERCOT and developed in consultation with commission staff, a winter weather readiness report that:

(A) Describes all activities engaged in by the TSP to complete the requirements of paragraph (1) of this subsection, including any assertions of good cause for noncompliance submitted under paragraph (4) of this subsection; and

(B) Includes a notarized attestation sworn to by the TSP's highest-ranking representative, official, or officer with binding authority over the TSP, attesting to the completion of all activities described in paragraph (1) of this subsection, subject to any notice of or request for good cause exception submitted under paragraph (4) of

this subsection, and to the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(3) No later than December 10, 2021, ERCOT must file with the commission a compliance report that addresses whether each TSP has submitted the winter weather readiness report required by paragraph (2) of this subsection for its transmission system and facilities and whether the TSP submitted an assertion of good cause for noncompliance under paragraph (4) of this subsection.

(4) Good cause exception. A TSP may submit to the commission by December 1, 2021 a notice asserting good cause for noncompliance with specific requirements listed in paragraph (1) of this subsection. The notice must be submitted as part of the TSP's winter weather readiness report under paragraph (2) of this subsection.

(A) A TSP's notice must include:

(i) A succinct explanation and supporting documentation of the TSP's inability to comply with a specific requirement of paragraph (1) of this subsection;

(ii) A succinct description and supporting documentation of the efforts that have been made to comply with the requirement; and

(iii) A plan, with supporting documentation, to comply with each specific requirement of paragraph (1) of this subsection for which good cause is being asserted, unless good cause exists not to comply with the requirement on a permanent basis. A plan under this subparagraph must include a proposed compliance deadline for each requirement of paragraph (1) of this subsection for which good cause for noncompliance is being asserted and proposed filing deadlines for the TSP to provide the commission with updates on the TSP's compliance status.

(B) Commission staff will work with ERCOT to expeditiously review notices asserting good cause for noncompliance. Commission staff may notify a TSP that it disagrees with the TSP's assertion of good cause and will file the notification in the project in which the winter weather readiness reports are filed. In addition, ERCOT may evaluate the TSP's assertion of good cause as part of an inspection of the transmission facility.

(C) To preserve a good cause exception, a TSP must submit to the commission a request for approval of a good cause exception within seven days of receipt of commission staff's notice of staff's disagreement with the TSP's assertion.

(D) The commission may order a TSP to submit a request for approval of good cause exception.

(E) A request for approval of good cause exception must contain the following:

(i) A detailed explanation and supporting documentation of the inability of the TSP to comply with the specific requirement of paragraph (1) of this subsection;

(ii) A detailed description and supporting documentation of the efforts that have been made to comply with paragraph (1) of this subsection;

(iii) A plan, with supporting documentation, to comply with each specific requirement of paragraph (1) of this subsection for which the good cause exception is being requested, unless the TSP is seeking a permanent exception to the requirement. A plan under this subparagraph must include a proposed compliance deadline for each requirement of paragraph (1) of this subsection for which the good cause exception is being requested and proposed filing deadlines for the TSP to provide the commission with updates on its compliance status.

(iv) Proof that notice of the request has been provided to ERCOT; and

(v) A notarized attestation sworn to by the TSP's highest-ranking representative, official, or officer with binding authority over the TSP attesting to the accuracy and veracity of the information in the request.

(F) ERCOT is a required party to the proceeding under subparagraph (E) of this paragraph. ERCOT must make a recommendation to the commission on the request by the deadline set forth by the presiding officer in the proceeding.

(g) ERCOT inspections of transmission systems and facilities.

(1) ERCOT-conducted inspections. ERCOT must conduct inspections of transmission facilities within the fence surrounding a TSP's high-voltage switching station or substation for the 2021-2022 winter weather season and must prioritize its inspection schedule based on risk level. ERCOT may prioritize inspections based on factors such as whether a transmission facility is critical for electric grid reliability; has experienced a forced outage or other failure related to weather emergency conditions; or has other vulnerabilities related to weather emergency conditions. ERCOT must determine, in consultation with commission staff, the number, extent, and content of inspections and may conduct inspections using both employees and contractors.

(A) ERCOT must provide each TSP at least 48 hours' notice of an inspection unless otherwise agreed by the TSP and ERCOT. Upon provision of the required notice, a TSP must grant access to its facility to ERCOT and commission personnel, including an employee of a contractor designated by ERCOT or the commission to conduct, oversee, or observe the inspection.

(B) During the inspection, a TSP must provide ERCOT and commission personnel access to any part of the facility upon request and must make the TSP's staff available to answer questions. A TSP may escort ERCOT and commission personnel at all times during an inspection. During the inspection, ERCOT and commission personnel may take photographs and video recordings of any part of the facility and may conduct interviews of facility personnel designated by the TSP.

(2) ERCOT inspection report.

(A) ERCOT must provide a report on its inspection of a transmission system or facility to the TSP. The inspection report must address whether the TSP has complied with the requirements in subsection (f)(1) of this section.

(B) If the TSP has not complied with a requirement in subsection (f)(1) of this section, ERCOT must provide the TSP a reasonable period to cure the identified deficiencies.

(i) The cure period determined by ERCOT must consider what weather emergency preparation measures the TSP may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the TSP's noncompliance, and the complexity of the measures needed to cure the deficiency.

(ii) The TSP may request ERCOT determine a different amount of time to remedy the deficiencies. The request must be accompanied by documentation that supports the request for a different amount of time.

(iii) ERCOT, in consultation with commission staff, will determine the final cure period after considering a request for a different amount of time.

(C) ERCOT must report to commission staff any TSP that does not remedy the deficiencies identified under subparagraph (A)

of this paragraph within the cure period determined by ERCOT under subparagraph (B)(iii) of this paragraph.

(D) A TSP reported by ERCOT to commission staff under subparagraph (C) of this paragraph will be subject to enforcement investigation under §22.246 (relating to Administrative Penalties) of this title.

(h) Weather-related failures by a TSP to provide service. A TSP with a transmission system or facility that experiences repeated or major weather-related forced interruptions of service must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified professional engineer must not be an employee of the TSP or its affiliate and must not have participated in previous assessments for this system or facility for at least five years, unless the TSP can document that no other qualified professional engineers are reasonably available for engagement. The TSP must submit the qualified professional engineer's assessment to the commission and ERCOT. ERCOT must adopt rules that specify the circumstances for which this requirement applies and specify the scope and contents of the assessment. A TSP to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to commission staff for investigation any TSP that violates this 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 October 21, 2021.

TRD-202104246

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Effective date: November 10, 2021

Proposal publication date: September 10, 2021

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



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER A. PROCUREMENT

16 TAC §401.101

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.101 (Lottery Procurement Procedures) without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5336). The amended rule will not be republished.

The purpose of the proposed amendments is to update language concerning competitive bidding requirements for agency purchases to reflect amendments to Texas Government Code Chapter 2155 in Senate Bill 799 from the Regular Session of the 87th Texas Legislature, effective September 1, 2021. Senate Bill 799 amended Texas Government Code §2155.132(e) by increasing the dollar amount threshold that triggers a competitive bidding requirement from \$5,000 to \$10,000. While the Com-

mission is exempt from many contracting requirements under Chapter 2155, effort is made to adhere to state procurement guidelines provided by Chapter 2155. Therefore, these proposed amendments to 16 TAC §401.101(c) increase the dollar amount that triggers the requirement that the agency conduct a competitive solicitation from \$5,000 to \$10,000 for most agency purchases or leases of goods and services. The increased threshold would apply to purchases or leases of goods and services first initiated after the effective date of the rule.

The Commission received no written comments on the proposed amendments during the public comment period.

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on October 22, 2021.

TRD-202104273

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: November 11, 2021

Proposal publication date: August 27, 2021

For further information, please call: (512) 344-5392



SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.153

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.153 (Qualifications for License) without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5337). The amended rule will not be republished.

The purpose of the proposed amendments is to update the language concerning lottery retailer eligibility requirements to reflect amendments to Tex. Gov't Code §466.155(a)(4)(C) by House Bill 1545 from the Regular Session of the 86th Texas Legislature. Specifically, House Bill 1545 amended the State Lottery Act, Texas Government Code Chapter 466, by updating the names of certain alcoholic beverage permits corresponding to prohibited retailer locations to conform to the Alcoholic Beverage Code. Those permit names also need to be updated in Commission Rule §401.153(c)(3).

The Commission received no written comments on the proposed amendments during the public comment period.

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104285

Bob Biard

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Texas Lottery Commission

Effective date: November 14, 2021

Proposal publication date: August 27, 2021

For further information, please call: (512) 344-5392



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.8

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter A, §4.8, Excused Absence for a Person Called to Active Military Service, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5132). The rule will not be republished.

Specifically, the adopted amendment clarifies that absence of a student from attending classes or other activities is excused because of required military service, not active military service.

Texas Education Code Section 51.9111, as amended by Senate Bill 937 (87R), directs the Coordinating Board to adopt rules for the determination of the maximum duration a student must be excused because of military service. Senate Bill 937 amended the statute by changing the phrase "active military service" to "required military service." These adopted amendments are limited to implementing the revision to statute enacted in Senate Bill 937.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 51.9111, which requires the Coordinating Board to adopt rules for establishing a maximum period for which a student may be excused for required military service.

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 October 22, 2021.

TRD-202104256

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6206



19 TAC §4.9

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter A, §4.9, Limitations on the Number of Courses That May Be Dropped under Certain Circumstances By Undergraduate Students, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5133). The rule will not be republished.

Specifically, this adopted amendment implements the express provisions of new Texas Education Code §51.907(e)(2), and will allow students to exceed the maximum limitation of courses dropped in the event of a disaster, recognized and declared by the governor, which results in the cessation or limitation of in-person course attendance by students at the institution.

Texas Education Code Section 51.907, as amended by Senate Bill 165 (87R), directs the Coordinating Board to adopt rules for the determination of the duration of no or limited in-person course attendance at institutions that significantly affects the student's ability to participate in coursework under the conditions of an event which the governor has declared a disaster.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 51.907, which provides the Coordinating Board with the authority to adopt rules for the determination of the duration of limitation or cessation of course attendance as a result of a disaster which significantly affects student participation in course work.

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 October 22, 2021.

TRD-202104257
Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
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SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.84

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Sub-

chapter D, §4.84, Institutional Agreements, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5135). The rule will not be republished.

Specifically, this adopted amendment adds an item to dual credit agreements between an institution of higher education and a school district that requires the designation of at least one employee of the district or institution as responsible for providing academic advising to a student who enrolls in a dual credit course under the program before the student begins the course.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Sections 28.009(b) and 130.001(b)(3) - (4), which provides the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

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 October 22, 2021.

TRD-202104258
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6206



CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §5.51

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 5, Subchapter C, §5.51, Publishing of Doctoral Program Data, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5136). The rule will not be republished.

Specifically, this adopted repeal removes the requirement that public four-year institutions publish data annually regarding the performance of their doctoral programs, thereby reducing their reporting burden. The Coordinating Board regularly reviews

statutory language to repeal any unnecessary or duplicative data reporting. The adopted repeal reduces duplicative institutional reporting.

The following comments were received regarding the adoption of the repeal.

Two comments from University of Houston:

I write to share my support of the repeal of rules for posting doctoral data (Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter C, §5.51). Repealing this rule will save much time that is spent by numerous people across our campus to put this data together. Not only does my office have to spend time with a number of the items, the graduate schools works with people in all our colleges to gather pieces that are not easily obtained in either our HR or student information system. It really takes a couple of months to put together once everything is done. And the effort to work on this is on top of everyone's regular work activity. We have much information about our students at the doctoral level already published on our website if individuals wanted to learn about them. I strongly support repealing this rule.

I wanted to record my comments in support of repealing the reporting tied to the 18 Characteristics of PhD programs. In my position, I help put together this data for one of the colleges, around 10 individual programs, for the University of Houston. I find it to be very tedious to put this data together each year. While there are certain data points from that report that we regularly tabulate, use in strategic planning, and make available to the public, putting together some of the other data points to be very time consuming and hard to keep uniform across disciplines. I would absolutely do the work if I thought potential students were using this data, but despite our efforts to post the information in highly-visible areas, I truly believe that students rarely look for this kind of data. Even if they stumble onto the data, I just don't think it factors into their decision to choose/ not choose our programs. They're much more likely to be using the opinions of mentors, peers, and the important people in their lives over these reports. Please allow us to skip this report. It just doesn't have the value for which it was originally intended and has become a groan-worthy part of each year's cycle of reports. Thank you for your time.

Comment from The University of Texas System:

I write to express my support to the Texas Higher Education Coordinating Board for repealing Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter C, §5.51, regarding the publishing of doctoral program data.

Comment from The University of Texas at Tyler:

I am writing to express my support of the proposed repeal of rules for publishing doctoral program data (Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter C, §5.51). Even for our institution, which currently has relatively few doctoral programs, this requirement has been an undue burden. This reporting typically requires more than 40 hours each year across several departments. Repeal of this requirement will allow us to better use this time to serve our students.

Comment from University of North Texas:

I am writing to support the removal of the above named reporting requirement. The amount of staff time dedicated to this reporting requirement could and should instead be focused on supporting student success and institutional outcomes that align with the 60x30xTX plan. This reporting effort does not appear to be uti-

lized broadly and given the wide range of data now available in the market place this is a duplicative reporting effort. I would encourage the removal of this expectation so that our institutional data practitioners can prioritize more pressing projects with a direct outcome on Texas residents.

Comment from The University of Texas Health Science Center at Houston:

I am in agreement with the proposal to repeal the requirement for doctoral programs to publish program data on their website. Specifically, doctoral programs are all very unique, not least because doctoral programs tend to be very individualized once the required courses are completed. Without standardized comparison data, it is difficult to know how to interpret the data.

Comment from The University of Texas at El Paso:

Thank you for considering the elimination of the annual publication of doctoral program data to assess a doctoral program's performance. These data are already available in multiple formats and locations on the THECB website (e.g., THECB Accountability) and on most institutional websites. Repeal of this requirement will reduce duplicative institutional reporting at both the State and federal levels (NCES).

Coordinating Board staff concur with these comments in favor of the repeal.

The repeal is adopted under Texas Education Code, Section 61.0512, which provides the Coordinating Board with the authority to review and approve degree programs at public institutions of higher education.

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 October 22, 2021.

TRD-202104259
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6206



CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.7, §7.8

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 7, Subchapter A, §7.7 and §7.8, Degree-granting Colleges and Universities other than Texas Public Institutions, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5137). The rules will not be republished.

Specifically, these adopted amendments clarify institutions' compliance requirements and restrictions, including incorporation of

Senate Bill 1490 (87R) requirements for authorization of professional degrees.

Texas Education Code, Title 3, Subtitle B, Chapter 61, Subchapter G, §61.311, allows the Coordinating Board to promulgate standards, rules, and regulations governing the administration of Subchapter G. The adopted amendments implement SB 1490 (87R) requirements for authorization of professional degrees and will clarify institutions' compliance requirements and restrictions.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Title 3, Subtitle B, Chapter 61, Subchapter G, §61.303, which provides private postsecondary educational institutions which are fully accredited and not operating under sanctions imposed by a recognized accrediting agency the ability to receive a certificate of authorization; §§61.304 - 310, which provide the requirements for private postsecondary educational institutions which are working toward institutional accreditation to apply for a certificate of authority; and §61.311, which provides the Coordinating Board with the authority to promulgate standards, rules, and regulations governing the administration of Subchapter G relating to regulation of private postsecondary educational institutions.

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 October 22, 2021.

TRD-202104260

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 11, 2021

Proposal publication date: August 20, 2021

For further information, please call: (512) 427-6209



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER N. BACCALAUREATE DEGREE PROGRAMS

19 TAC §9.673

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 9, Subchapter N, §9.673, General Provisions, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5139). The rule will not be republished.

Specifically, this adopted amendment allows public junior colleges to apply for Coordinating Board approval to offer a baccalaureate degree program in nursing if the college district has a taxable property valuation of at least \$4 billion in the previous year and there are no four-year institutions of higher education located within the county(ies) included in the junior college district. It also increases the number of baccalaureate programs

public junior colleges may offer from three to five for colleges that were previously limited to offering three baccalaureate programs.

The adopted amendments are required to implement legislative changes made to Texas Education Code Sections 130.306 and 130.307 by House Bills 3348 (87R) and HB 885 (87R). Texas Education Code Section 130.302 authorizes the Coordinating Board to approve applied baccalaureate degrees at public junior colleges. These legislative changes were intended to increase the number of public junior colleges authorized to offer baccalaureate degree programs in underserved communities.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 130.302, which provides the Coordinating Board with the authority to authorize public junior colleges to offer baccalaureate degree programs.

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

Filed with the Office of the Secretary of State on October 22, 2021.

TRD-202104261

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 11, 2021

Proposal publication date: August 20, 2021

For further information, please call: (512) 427-6206



CHAPTER 17. RESOURCE PLANNING

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 17, Subchapters A - F, I, K, and L, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5140). The rules will not be republished.

The repeal of existing Chapter 17 and via separate rulemaking the re-adoption, updates Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs. The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on them. The adopted amendments reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and make clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the repeal.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§17.1 - 17.3

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104262
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER B. BOARD APPROVAL

19 TAC §§17.10 - 17.13

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104264
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General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104266

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER D. RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS

19 TAC §17.30

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104267
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER E. RULES APPLYING TO REPAIR AND RENOVATION PROJECTS

19 TAC §17.40

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104268
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER F. RULES APPLYING TO REAL PROPERTY PURCHASE PROJECTS

19 TAC §17.50, §17.51

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104269
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER I. RULES APPLYING TO ENERGY SAVINGS PERFORMANCE CONTRACTS

19 TAC §§17.80 - 17.82

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104270
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER K. REPORTS

19 TAC §17.100, §17.101

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104271
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER L. FACILITIES AUDIT

19 TAC §§17.110 - 17.114

The repeal is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104272
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§17.1 - 17.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter A, §§17.1 - 17.3, General Provisions, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5143). The rules will not be republished.

Specifically, the adopted new rules update Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs.

The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on them. The adopted new rules reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and makes clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide

the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104275

Nichole Bunker-Henderson

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Texas Higher Education Coordinating Board

Effective date: November 11, 2021

Proposal publication date: August 20, 2021

For further information, please call: (512) 427-6548



SUBCHAPTER B. REPORTING REQUIREMENTS

19 TAC §§17.20, §17.21

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter B, §17.20 and §17.21, Reporting Requirements, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5146). The rules will not be republished.

Specifically, the adopted new rules update Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs.

The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on them. The adopted new rules reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and make clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the new rules.

The new section is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104276

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 11, 2021

Proposal publication date: August 20, 2021

For further information, please call: (512) 427-6548

SUBCHAPTER C. PROJECT STANDARDS

19 TAC §§17.30 - 17.32

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter C, §§17.30 - 17.32, Project Standards, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5148). The rules will not be republished.

Specifically, the adopted new rules update Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs.

The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on them. The adopted new rules also reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and make clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104277

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: November 11, 2021

Proposal publication date: August 20, 2021

For further information, please call: (512) 427-6548



SUBCHAPTER D. ENERGY SAVING PERFORMANCE CONTRACTS

19 TAC §§17.40 - 17.42

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter D, §§17.40 - 17.42, Energy Saving Performance Contracts, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5150). The rules will not be republished.

Specifically, the adopted new rules update Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs.

The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on

them. The adopted new rules reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and make clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104278
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER E. REPORTS

19 TAC §17.100, §17.101

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter E, §17.100 and §17.101, Reports, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5151). The rules will not be republished.

Specifically, the adopted new rules update Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs.

The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on them. The adopted new rules reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and make clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the new rules.

The new section is adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104279

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



SUBCHAPTER F. FACILITIES AUDIT

19 TAC §§17.110 - 17.114

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114, Facilities Audit, without changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5153). The rules will not be republished.

Specifically, the adopted new rules update Chapter 17 to clarify and reform rules to reduce administrative burden for both the Coordinating Board and the institutions in relation to facilities programs.

The agency is exercising its discretion to not review capital construction and purchase projects and instead only collect data on them. The adopted new rules reform sections pertaining to facilities audits for clarity and accuracy in how the agency implements the program and make clarifying changes to the Energy Savings Performance Contract approval program.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Sections 61.0572, 61.058, 61.0583, and 51.927, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

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 October 22, 2021.

TRD-202104280
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 11, 2021
Proposal publication date: August 20, 2021
For further information, please call: (512) 427-6548



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1006

The Texas Education Agency adopts new §97.1006, concerning accountability and performance monitoring. The new section is adopted with changes to the proposed text as published in the August 6, 2021 issue of the *Texas Register* (46 TexReg 4816) and will be republished. The new section adopts in rule applicable guidelines for the alternative methods and standards for evaluating performance for the 2020-2021 school year.

REASONED JUSTIFICATION: Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, established alternative methods and standards for evaluating performance for the 2020-2021 school year. The alternative evaluation may be requested by school districts or open-enrollment charter schools with campuses that meet the participation requirements for all students in all subject areas for the annual measurement of achievement under the Every Student Succeeds Act (20 U.S.C. §6311(c)(4)(E)), §1111, and to which the most recent performance rating assigned, other than a Not Rated rating, is a D, F, or performance that needs improvement.

New §97.1006 adopts the indicators, standards, and procedures used by the commissioner of education to determine alternative accountability ratings for the 2020-2021 school year for campuses that meet the statutory criteria for review and request such review.

The new section was modified at adoption to change the dates in subsections (a) and (f) to December 15, 2021. This change will ensure all school districts and open-enrollment charter schools have sufficient time to request the 2021 optional alternative evaluation.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 6, 2021, and ended September 7, 2021. Following is a summary of the public comments received and the corresponding agency responses.

Comment. Four school district staff members requested the rule allow all campuses with a previous unacceptable rating be evaluated under the optional alternative evaluation without regard to participation rate.

Response. The agency disagrees. Texas Education Code (TEC), §39.0545, defines the two eligibility criteria for the optional alternative evaluation. The statute requires a campus to meet the same participation rate as is required under Section 1111, Every Student Succeeds Act (20 U.S.C. §6311(c)(4)(E)), which is 95% for the all students group in all subject areas.

Comment. Four school district staff members and three individuals requested the rule allow identified alternative education accountability (AEA) campuses with a previous unacceptable rating be evaluated under the optional alternative evaluation without regard to participation rate.

Response. The agency disagrees. TEC, §39.0545, defines the two eligibility criteria for the optional alternative evaluation. The statute requires a campus to meet the same participation rate as is required under Section 1111, Every Student Succeeds Act (20 U.S.C. §6311(c)(4)(E)), for the all students group in all subject areas.

Comment. The Texas School Alliance (TSA), seven school district staff members, and five individuals commented that the optional alternative evaluation methodology should use the "better of" Student Achievement or School Progress, Part B: Relative Performance domains methodology instead of the average of these two domains.

Response. The agency disagrees. The accountability system relies on the disaggregated data in the Closing the Gaps domain as 30% of the overall rating to reduce the chance that poor performance in a historically underserved student group is not masked with the use of the best of methodology among the Student Achievement and School Progress Parts A and Part B domains. TEC, §39.0545, requires the use of the Student Achievement and School Progress, Part B: Relative Performance domains to determine if a campus meets the minimum standard for a 2021 *Acceptable* rating. Although statute does not preclude inclusion of Closing the Gaps domain data, using an average of the Student Achievement and School Progress, Part B: Relative Performance domains ensures poor performance for historically underserved student groups is not masked by using only one domain for the alternative evaluation.

Comment. One school district staff member commented that Texas English Language Proficiency Assessment System (TEL-PAS) and English learner (EL) performance should be considered in addition to State of Texas Assessments of Academic Readiness (STAAR®) outcomes.

Response. The agency provides the following clarification. ELs and emergent bilingual students who are in their first year in U.S. schools are excluded from accountability performance calculations. ELs who are in their second year in U.S. schools are included in accountability calculations and alternative evaluation calculations for 2021. ELs who are in their second year in U.S. schools are included in the STAAR® component of the Student Achievement and School Progress, Part B: Relative Performance domains using the EL performance measure. ELs who are in their second year in U.S. schools who have a parental denial for EL services do not receive an EL performance measure and are included in the same manner as non-ELs.

Comment. TSA, three school district staff members, and one individual commented that the scaling methodologies established for 2018 accountability based on school year 2016-2017 outcomes should be recalculated based on 2020-2021 data as a result of lower participation due to COVID-19 impact.

Response. The agency disagrees. Eligible campuses must meet the statutory 95% participation requirement, which negates the potential impact of lower outcomes as a result of low 2021 participation. Furthermore, lowering cut scores on the assumption that non-participating students scored higher than participating students is both hypothetical and inconsistent with demographic information on non-participants statewide. Additionally, maintaining scaling methodologies provides stability in the accountability system and allows for an *Acceptable* threshold that aligns with prior year accountability outcomes when participation thresholds are equitable.

Comment. TSA commented that the agency should include AEA and dropout recovery schools in the alternative evaluation for the 2020-2021 school year.

Response. The agency provides the following clarification. All campuses, including those evaluated under AEA, are eligible for evaluation under the optional alternative evaluation. These campuses will use existing adopted AEA cut points and scaling for optional alternative evaluation outcomes.

Comment. TSA commented that their members agree (a) with the legislative intent of SB 1365, 87th Texas Legislature, Regular Session, 2021, to provide an opportunity for campuses with a current D/F rating (that meet the participation requirements) to demonstrate student progress and achievement gains they have

made since 2019; and (b) that for campuses that qualify for the alternative evaluation, an *Acceptable* performance rating for the 2020-2021 school year "is considered a break in consecutive school years of unacceptable performance ratings."

Response. The agency agrees.

STATUTORY AUTHORITY. The new section 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, as amended by House Bill (HB) 773 and HB 1147, 87th Texas Legislature, Regular Session, 2021, 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, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, 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, §39.0543, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which defines the performance ratings requiring intervention or other action; TEC, §39.0545, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt alternative methods and standards for evaluating performance for the 2020-2021 school year for campuses that meet participation and performance rating requirements for 2020-2021; TEC, §39.0548, as amended by SB 879, 87th Texas Legislature, Regular Session, 2021, 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 assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; 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) as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0543; 39.0545; 39.0548; 39.055; 39.151; 29.081(e), (e-1), and (e-2); and 12.104(b)(3)(L).

§97.1006. *Alternative Methods and Standards for Evaluating Performance for 2020-2021 School Year.*

(a) A school district or an open-enrollment charter school may request no later than December 15, 2021, an accountability special evaluation for the 2020-2021 school year for a campus:

(1) that meets a 95% assessment participation rate threshold for the all students group for all subjects combined for the 2020-2021 school year; and

(2) to which the most recent overall performance rating assigned, other than a rating of Not Rated, is a D, F, or performance that needs improvement.

(b) Upon request, as provided in subsection (a) of this section, the commissioner of education shall evaluate a campus that meets the requirements of subsection (a)(1) and (2) of this section in:

(1) the Student Achievement domain of Texas Education Code (TEC), §39.053(c)(1); and

(2) the School Progress, Part B: Relative Performance domain of TEC, §39.053(c)(2).

(c) The component scores for the Student Achievement domain of TEC, §39.053(c)(1), and School Progress, Part B: Relative Performance domain of TEC, §39.053(c)(2), shall be calculated using scaling methodologies as were adopted in the *2020 Accountability Manual* under §97.1001 of this title (relating to Accountability Rating System).

(d) One of the following performance ratings shall be assigned according to the results of the evaluation requested under subsection (b) of this section.

(1) If the evaluation results in an outcome of A, B, or C by averaging the scaled score of the Student Achievement domain of TEC, §39.053(c)(1), and the scaled score of the School Progress, Part B: Relative Performance domain of TEC, §39.053(c)(2), the campus shall be assigned a performance rating of Acceptable for the 2020-2021 school year.

(2) If the evaluation results in an outcome of D or F by averaging the scaled score of the Student Achievement domain of TEC, §39.053(c)(1), and the scaled score of the School Progress, Part B: Relative Performance domain of TEC, §39.053(c)(2), the campus shall be assigned a performance rating of Not Rated: Declared State of Disaster for the 2020-2021 school year.

(e) An Acceptable performance rating assigned under subsection (d)(1) of this section is considered a break in consecutive school years of unacceptable performance ratings under TEC, §39.054.

(f) A school district or an open-enrollment charter school may appeal a rating issued under subsection (d)(2) of this section in accordance with TEC, §39.151, and the determination of consecutive school years of unacceptable performance ratings in accordance with TEC, §39.054. For the 2020-2021 school year, such an appeal must be filed with the Texas Education Agency by December 15, 2021.

(g) This section does not apply to an intervention ordered on the basis of consecutive school years of unacceptable performance ratings accrued before the effective date of this section.

(h) This section expires September 1, 2027.

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 October 25, 2021.

TRD-202104290

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: November 14, 2021

Proposal publication date: August 6, 2021

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER I. TEXAS ENVIRONMENTAL LEAD REDUCTION

25 TAC §295.202, §295.212

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §295.202, concerning Definitions, and §295.212, concerning Standards for Conducting Lead-Based Paint Activities. The amendment to §295.202 is adopted with changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4261) and will be republished. The amendment to §295.212 is adopted without changes to the proposed text and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Texas Occupations Code, §1955.051, which requires that the Texas environmental lead reduction rules be consistent with federal standards. The Environmental Lead Program (program) is updating the Texas environmental lead reduction rules for consistency with the United States Environmental Protection Agency (EPA) regulation under 40 Code of Federal Regulations (CFR), §745.227(h)(3), effective January 6, 2020, and 40 CFR §§745.223 and 745.227(e)(8)(viii), effective December 21, 2020, and as required in 40 CFR §745.325(e)(1).

The EPA lowered the dust-lead hazard standards and dust-lead clearance standards for lead in dust on floors and window sills from 40 micrograms (μg) of lead in dust per square foot (ft^2) on floors and 250 μg of lead in dust per ft^2 on interior window sills, to 10 $\mu\text{g}/\text{ft}^2$ and 100 $\mu\text{g}/\text{ft}^2$, respectively. The EPA provided that states authorized to administer lead abatement programs have two years to update the state rules to be at least as protective as the new EPA rule. As a result, the deadline for implementation of the federal dust-lead hazard standard is January 6, 2022, and the dust-lead clearance standard is March 8, 2023.

These new lower levels are consistent with the levels that the United States Department of Housing and Urban Development (HUD) requires of property owners that do lead hazard control and lead abatement to receive HUD funding assistance. HUD requires certain property owners to conduct lead hazard control or lead abatement and meet the 10 $\mu\text{g}/\text{ft}^2$ and 100 $\mu\text{g}/\text{ft}^2$ dust-lead hazard and clearance levels.

COMMENTS

The 31-day comment period ended August 16, 2021.

During this period, DSHS did not receive any comments regarding the proposed rules.

A minor editorial change is made to §295.202(84) to correct an equation in the rule that was published incorrectly with strikethroughs in the *Texas Register*.

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. The amendments are also authorized by Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, for the administration of Texas Health and Safety Code, Chapter 1001, and including DSHS duties under the Texas Occupations Code, Chapter 1955. Texas Occupations Code, Chapter 1955 requires the Executive Commissioner to establish rules for certification of persons involved in lead-based paint activity in target housing or in a child-occupied facility and accreditation of training providers for persons involved in lead-based paint activity and requires that certain rules adopted under its authority must be consistent with applicable federal law and rules.

§295.202. Definitions.

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

(1) Accessible surface--An interior or exterior surface painted with lead-based paint that is accessible to a young child to mouth or chew.

(2) Accredited training program--A training program that has been accredited by the Department of State Health Services (department) to provide training for persons engaged in lead-based paint activities.

(3) Act--The Texas Occupations Code, Chapter 1955.

(4) Adequate quality control--A plan or design to ensure the authenticity, integrity, and accuracy of lead-based paint samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

(5) Approved documented methodologies--Methods or protocols used to sample for the presence of lead in paint, dust, and soil. Approved documented methodologies may be found in the United States Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 edition); Standard Specification for Wipe Sampling Materials for Lead in Surface Dust (ASTM Designation E1792); Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques (ASTM Designation E1728); Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques or equivalent method (ASTM Designation E1727); and other equivalent methods recognized by EPA, HUD, or the department.

(6) Arithmetic mean--The algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(7) ASTM--American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, Pennsylvania, 19428.

(8) Bare soil--Soil not covered with grass, sod, or some other similar vegetation. Bare soil includes sand.

(9) Certified lead abatement project designer--A person who has been certified by the department to prepare lead abatement project designs, occupant protection plans, and abatement reports.

(10) Certified lead abatement supervisor--A person who has been certified by the department to supervise and conduct lead

abatements, and to prepare occupant protection plans and abatement reports.

(11) Certified lead abatement worker--A person who has been certified by the department to perform abatements.

(12) Certified lead firm--A company, contractor, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities, and that has been certified by the department.

(13) Certified lead inspector--A person who has been certified by the department to conduct lead inspections. Inspectors may also sample dust and soil for the purposes of abatement cleanup and clearance testing.

(14) Certified lead risk assessor--A person who has been certified by the department to conduct lead risk assessments, lead inspections and lead hazard screens. Risk assessors may also sample dust and soil for the purposes of lead abatement cleanup and clearance testing.

(15) Chewable surface--An interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

(16) Child-occupied facility--A building or part of a building constructed before 1978, including, but not limited to, a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

- (A) three hours each day; and
- (B) 60 hours each year.

(17) Clearance levels--Values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. To achieve clearance when dust sampling is required, values below these levels must be achieved. Clearance levels that are appropriate when dust sampling is required may be found in §295.212(d)(13) of this title (relating to Standards for Conducting Lead Based Paint Activities).

(18) Commissioner--The Commissioner of the Department of State Health Services.

(19) Common area--A portion of target housing or a child-occupied facility that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(20) Common area group--A group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

(21) Complete certification application--An application that contains, at a minimum:

- (A) an original signature not photocopied, facsimiled, or electronically reproduced;
- (B) a legible printed name and mailing address;
- (C) any business or organization affiliation and mailing address;

(D) copies of any applicable required training course completion certificates issued by a department-accredited training provider within the specified time frames;

(E) documentation of any applicable required formal education in the form of a diploma, degree, or transcript;

(F) documentation of any applicable required work experience detailing job duties that includes verification contacts covering the minimum time frames required;

(G) documentation of any specified professional certification, professional engineer, or professional registration, if required;

(H) the appropriate certification fee; and

(I) for lead firms, documentation of items required in §295.211(b)(1) - (3) of this title (relating to Lead Firm Certification Requirements), as applicable.

(22) Component or building component--Specific design or structural elements or fixtures of target housing or a child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components, such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components, such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(23) Concentration--The relative content of a specific substance contained within a larger mass, such as the amount of the lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

(24) Containment--A regulated area that has been sealed and designed to prevent the release of lead-containing dust or materials into surrounding areas.

(25) Course agenda--An outline of the key topics to be covered during a training course, including the time allotted to teaching each topic.

(26) Course test--An evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(27) Course test blue print--Written documentation of the proportion of course test questions devoted to each major topic in the course curriculum.

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

(29) Deteriorated paint--Any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(30) Discipline--One of the specific types or categories of lead-based paint activities for which individuals may receive training from accredited programs and become certified by the department. For example, "lead worker" is a discipline.

(31) Distinct painting history--The application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component, room, or unit of a building structure.

(32) Dripline--The area within three feet surrounding the perimeter of a building.

(33) Elevated blood lead level (EBL)--An absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken three to four months apart.

(34) EHNG--Environmental Health Notifications Group within the Inspection Unit, Environmental and Consumer Safety Section, Department of State Health Services.

(35) Encapsulant--A substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material. Only encapsulant products that meet the performance standards developed by ASTM (E1796, E1795) shall be used for lead hazard reduction.

(36) Encapsulation--The application of an encapsulant.

(37) Enclosure--A process that makes lead-based paint inaccessible by providing a physical barrier that is mechanically attached to a surface.

(38) EPA--The United States Environmental Protection Agency.

(39) Federal laws and rules--Applicable federal laws and regulations adopted in this paragraph:

(A) Toxic Substances Control Act (15 United States Code §2681 et seq.) Title IV, and the rules adopted by the EPA under that law for authorization of state programs;

(B) Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, and any regulations or requirements adopted by the HUD regarding eligibility for grants to states and local governments; and

(C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.

(40) Friction surface--An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

(41) Guest instructor--An individual designated by the training program manager to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(42) Hands-on skills assessment--An evaluation which tests the trainees' ability to perform satisfactorily the work practices and procedures used by a discipline, as well as any other skills covered in a training course.

(43) HEPA filter--A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 microns or larger in diameter.

(44) Historical records--Documentation which identifies the material makeup (including brand, color type, and lead content) and dates of application of paint and other surface coatings.

(45) HUD--The United States Department of Housing and Urban Development.

(46) HVAC--Heating, ventilation, and air conditioning systems.

(47) Impact surface--An interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(48) Inspection--A surface-by-surface investigation by a certified lead inspector or a certified lead risk assessor to determine the presence of lead-based paint including a written report explaining the results of the investigation.

(49) Interim controls--A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(50) Interior window sill--The portion of the horizontal window ledge that protrudes into the interior of the room.

(51) Lead Abatement--

(A) Includes any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(i) the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(ii) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

(iii) abatement projects, which specifically include, but are not limited to:

(I) projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to target housing or child-occupied facilities that:

(-a-) shall result in the permanent elimination of lead-based paint, lead-contaminated dust or soil, and other lead-based paint hazards; or

(-b-) are described in clauses (i) and (ii) of this subparagraph.

(II) projects resulting in the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons certified in accordance with §§295.206 - 295.211 of this title relating to the certification requirements unless such projects are covered by subparagraph (B) of this paragraph;

(III) projects resulting in the permanent elimination of a lead-based paint hazard, lead-based paint, and lead-contaminated dust or soil, conducted by persons who, through their company name or promotional literature, represent, advertise, or hold themselves to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by subparagraph (B) of this paragraph; or

(IV) projects involving the permanent elimination of lead-based paint hazards, lead-based paint, or lead-contaminated dust or soil, that are conducted in response to state or local abatement orders.

(B) Excludes:

(i) renovation, remodeling, or landscaping activities, which are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards;

(ii) interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards; and

(iii) demolition of target housing buildings and child-occupied facilities.

(52) Lead-based paint--Paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

(53) Lead-based paint activity--Inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement or removal, or creation of lead-based paint hazards.

(54) Lead-based paint hazard--Hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in this paragraph.

(A) Paint-lead hazard. A paint-lead hazard is any of the following:

(i) any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in subparagraph (B) of this paragraph;

(ii) any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame);

(iii) any chewable lead-based painted surface on which there is evidence of teeth marks; and

(iv) any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(B) Dust-lead hazard. A dust-lead hazard is surface dust in a residential building or child-occupied facility that contains mass-per-area concentration of lead equal to or exceeding 10 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) on floors or 100 $\mu\text{g}/\text{ft}^2$ on interior window sills based on wipe samples.

(C) Soil-lead hazard. A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ppm) in a play area or average of 1,200 ppm of bare soil in the rest of the yard based on soil samples.

(55) Lead-hazard screen--An activity conducted by a certified risk assessor that involves limited paint and dust sampling to determine the presence of a lead-based paint hazard.

(56) Living area--Areas of a target housing unit or a child-occupied facility used by one or more children six years of age or younger, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

(57) Loading--The quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

(58) Mid-yard--An area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

(59) Multi-family dwelling--A structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(60) Non-profit--An entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

(61) OSHA--The Occupational Safety and Health Administration of the United States Department of Labor.

(62) Permanently covered soil--Soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

(63) Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

(64) Play area--An area of frequent soil contact by children six years of age or less as indicated by, but not limited to, such factors, including the following the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

(65) Principal instructor--The individual who has the primary responsibility for organizing and teaching a particular course.

(66) Recognized laboratory--An environmental laboratory recognized by EPA, pursuant to the Toxic Substances Control Act (TSCA) §405(b), as being capable of performing an analysis for lead content in materials, including paint, soil, and dust.

(67) Reduction--Any measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods, including, but not limited to, interim controls and abatement.

(68) Residential building--A building containing one or more residential dwellings.

(69) Residential dwelling--A dwelling that is:

(A) a detached single family dwelling unit, including attached structures such as porches and stoops; or

(B) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(70) Risk assessment--An assessment consists of:

(A) an on-site investigation conducted by a certified risk assessor to determine the existence, nature, severity, and location of lead-based paint hazards; and

(B) a written report by the person or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(71) Room--A separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry

room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

(72) Soil Sample--A sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

(73) Start-date--The date that the lead abatement begins.

(74) Stop-date--The date that all dust-wipe clearance levels are achieved and reported to the lead firm conducting the abatement for interior abatement, or for exterior abatement, the date that visual clearance levels are all achieved.

(75) Target housing--Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is six years of age or younger resides or is expected to reside in such housing) or any zero-bedroom dwelling. As defined in this section, target housing includes the terms residential dwelling, multi-family dwelling, and unit.

(76) Testing--The collection of paint, soil, or dust-wipe samples for determining the presence of lead in paint or lead-based paint hazards by an EPA recognized laboratory or the use of an XRF.

(77) Training curriculum--An established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

(78) Training hour--At least 50 minutes of actual teaching, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

(79) Training manager--The individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(80) TSCA--Toxic Substances Control Act (15 United States Code §2681 et seq) Title IV.

(81) Unit--A room or connected group of rooms used or intended to be used by a single tenant or owner.

(82) Visual inspection for clearance testing--The visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed, as indicated by the absence of visible residue, dust, and debris.

(83) Visual inspection for risk assessment--The visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

(84) Weighted arithmetic mean--The arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arith-

metic mean of a single surface sample containing 60 µg/ft², a composite sample (three subsamples) containing 100 µg/ft², and a composite sample (four subsamples) containing 110 µg/ft² is 100 µg/ft². This result is based on the equation $[60 + (3*100) + (4*110)]/(1+3+4)$.

(85) Window trough--For a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The trough is sometimes referred to as the window "well."

(86) Wipe sample--A sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determinations by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

(87) Working days--Monday through Friday including holidays that fall on those days.

(88) Worksite--An interior or exterior area at a target housing or child-occupied facility where lead-based paint abatement activity is taking place or is scheduled to take place.

(89) X-Ray Fluorescence Analyzer (XRF)--An instrument used to determine the concentration of lead in a sample; readings are in milligrams per square centimeter (mg/cm²).

(90) Zero-bedroom dwelling--Any residential dwelling in which the living area is not separated from the sleeping area. The term includes, but is not limited to, efficiencies, studio apartments, dormitory housing, military barracks, and rental of individual rooms in residential dwellings.

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 October 20, 2021.

TRD-202104215

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Effective date: November 9, 2021

Proposal publication date: July 16, 2021

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PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.2, §601.3

The Texas Medical Disclosure Panel (Panel) adopts amendments to §601.2, concerning Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A and to §601.3, concerning Procedures Requiring No Disclosure of Specific Risks and Hazards--List B. Section 601.2 is adopted with changes to the proposed text as published in the April 23, 2021, issue of the *Texas Register* (46 TexReg 2683) and will be

republished. Section 601.3 is adopted without changes and will not be republished.

BACKGROUND AND PURPOSE

These amendments are adopted in accordance with Texas Civil Practice and Remedies Code §74.102, which created the Panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.2 contains the List A procedures requiring disclosure of specific risks and hazards to patients before being undertaken; §601.3 contains the List B procedures for which no disclosure of specific risks and hazards is required.

SECTION-BY-SECTION SUMMARY

Amendments to §601.2 modify the list of procedures and risks and hazards in subsection (b) regarding the cardiovascular system and subsection (o) regarding respiratory system treatments and procedures.

An amendment to §601.3 removes one procedure in subsection (o) regarding respiratory system from the list of procedures requiring no disclosure of specific risks and hazards because that procedure has been moved from List B to List A.

PUBLIC COMMENT

The 31-day comment period ended May 26, 2021.

During this period, the Panel received comments regarding the proposed amendments to §601.2(o), respiratory system treatments and procedures, from one commenter: Texas Medical Association.

Comment: The Texas Medical Association suggested that the risks for lung biopsy at §601.2(o)(5)(A) note that the need for insertion of chest tube in connection with an air leak with pneumothorax is a "potential need" and that the risk of "hemoptysis" be added.

Response: The Panel did not agree with adding that the risk was "potential" since all risks are potential but did revise the language for the risk in §601.2(o)(5)(A) to make it more readable. The Panel agreed with adding new rule text for "hemoptysis" to §601.2(o)(5)(C).

Comment: The Texas Medical Association suggested that the risks for "percutaneous" or "open tracheostomy" in §601.2(o)(9) include the risks of "bronchospasm" and "hemoptysis."

Response: The Panel agreed with adding the two risks in §601.2(o)(9)(G) and (H). The Panel also revised the risk in §601.2(o)(9)(C) "pneumothorax" to use language consistent with the language used under §601.2(o)(5)(A), lung biopsy.

Comment: The Texas Medical Association suggested that the risks for bronchoscopy at §601.2(o)(10) include the risks "bronchospasm," "hemoptysis" and "infection."

Response: The Panel agreed with adding "bronchospasm" and "hemoptysis," in §601.2(o)(10)(E) and (F). The Panel did not agree with adding "infection," as that risk is already included in the general listing of risks in "the Disclosure and Consent - Medical Care and Surgical Procedures form found at 25 TAC §601.4."

The Panel also revised the risk in §601.2(o)(10)(B) "pneumothorax" to use language consistent with the language under §601.2(o)(5)(A), lung biopsy.

Comment: The Texas Medical Association suggested that the risks for endobronchial valve replacement at §601.2(o)(11) include "bronchospasm," "hemoptysis" and "infection."

Response: The Panel agreed with adding "bronchospasm" and "hemoptysis" in §601.2(o)(11)(J) and (K) and added the explanation for "bronchospasm" used with prior listings of this risk. The Panel agreed with including "infection" but changed it to "recurrent infections" in §601.2(o)(11)(L). The Panel also revised the risk "pneumothorax" in §601.2(o)(11)(B) to use language consistent with the language used under §601.2(o)(5)(A), lung biopsy.

Comment: The Texas Medical Association suggested that the risks for "endobronchial balloon dilatation with or without stent replacement" at §601.2(o)(12) include "bronchial rupture" and "hemoptysis."

Response: The Panel agreed with adding these risks. The Panel deleted the current risk in §601.2(o)(12)(A) "Mucosal injury (damage to lining of airways) including perforation (hole in airway)" and replaced it with the suggested risk with modification, "Bronchial rupture (tearing of the airway)" with "need for additional surgery," as it more accurately reflects the risk. The Panel added the risk "hemoptysis" in §601.2(o)(12)(K). The Panel also revised the risk in §601.2(o)(12)(B) "pneumothorax" to use language consistent with the language used under §601.2(o)(5)(A), lung biopsy.

STATUTORY AUTHORITY

The amendments are authorized under Texas Civil Practice and Remedies Code §74.102, which created the Texas Medical Disclosure Panel in order to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the forms for the treatments and procedures which do require disclosure.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.

(a) Anesthesia.

(1) Epidural.

- (A) Nerve damage.
- (B) Persistent back pain.
- (C) Headache.
- (D) Bleeding/epidural hematoma.
- (E) Infection.
- (F) Medical necessity to convert to general anesthesia.
- (G) Brain damage.
- (H) Chronic pain.

(2) General.

- (A) Permanent organ damage.
- (B) Memory dysfunction/memory loss.
- (C) Injury to vocal cords, teeth, lips, eyes.
- (D) Awareness during the procedure.
- (E) Brain damage.

(3) Spinal.

- (A) Nerve damage.

- (B) Persistent back pain.
- (C) Bleeding/epidural hematoma.
- (D) Infection.
- (E) Medical necessity to convert to general anesthesia.
- (F) Brain damage.
- (G) Headache.
- (H) Chronic pain.

(4) Regional block.

- (A) Nerve damage.
- (B) Persistent pain.
- (C) Bleeding/hematoma.
- (D) Infection.
- (E) Medical necessity to convert to general anesthesia.
- (F) Brain damage.

(5) Deep sedation.

- (A) Memory dysfunction/memory loss.
- (B) Medical necessity to convert to general anesthesia.
- (C) Permanent organ damage.
- (D) Brain damage.

(6) Moderate sedation.

- (A) Memory dysfunction/memory loss.
- (B) Medical necessity to convert to general anesthesia.
- (C) Permanent organ damage.
- (D) Brain damage.

(7) Prenatal/Early Childhood Anesthesia. Potential long-term negative effects on memory, behavior, and learning with prolonged or repeated exposure to general anesthesia/moderate sedation/deep sedation during pregnancy and in early childhood.

(b) Cardiovascular system.

(1) Cardiac.

- (A) Coronary artery bypass.
 - (i) Acute myocardial infarction (heart attack).
 - (ii) Hemorrhage (severe bleeding).
 - (iii) Kidney failure.
 - (iv) Stroke.
 - (v) Sudden death.
 - (vi) Infection of chest wall/chest cavity.

(B) Heart valve replacement by open surgery, structural heart surgery.

- (i) Acute myocardial infarction (heart attack).
- (ii) Hemorrhage (severe bleeding).
- (iii) Kidney failure.
- (iv) Stroke.
- (v) Sudden death.

(vi) Infection of chest wall/chest cavity.

(vii) Valve related delayed onset infection.

(viii) Malfunction of new valve.

(ix) Persistence of problem for which surgery was performed, including need for repeat surgery.

(C) Heart transplant.

(i) Infection.

(ii) Rejection.

(iii) Death.

(D) Coronary angiography (Injection of contrast material into arteries of the heart), coronary angioplasty (opening narrowing in heart vessel), and coronary stent insertion (placement of permanent tube into heart blood vessel to open it).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(E) Percutaneous (through the skin) or minimally invasive heart valve insertion/replacement.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Malfunction of new valve.

(xi) Need for permanent pacemaker implantation.

(F) Left atrial appendage closure (closing of small pouch on left side of heart) - percutaneous (through the skin) or minimally invasive.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Device embolization (device moves from intended location).

(xi) Pericardial effusion (development of fluid in the sack around the heart) and cardiac tamponade (fluid around heart causing too much pressure for heart to pump properly).

(G) Patent foramen ovale/atrial septal defect/ventricular septal defect closure by percutaneous (through the skin) or minimally invasive procedure (closing of abnormal hole between the chambers of the heart).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Atrial fibrillation (irregular heart rhythm).

(xi) Pulmonary embolus (development of blood clot that travels to blood vessels in lungs).

(xii) Device embolization (device moves from where it is placed).

(xiii) Cardiac perforation (creation of hole in wall of heart).

(H) Electrophysiology studies (exams of heart rhythm), arrhythmia ablation (procedure to control or stop abnormal heart rhythms).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(xi) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(xii) Pulmonary vein stenosis (narrowing of blood vessel going from lung to t).

(I) Pacemaker insertion, AICD insertion (implanted device to shock the heart out of an abnormal rhythm).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during the procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Rupture of myocardium/cardiac perforation (hole in wall of heart).

(xi) Cause or worsening of arrhythmia (damage to heart electrical system causing abnormal heart rhythm), possibly requiring permanent pacemaker implantation, possibly life threatening.

(xii) Device related delayed onset infection (infection related to the device that happens at some time after surgery).

(J) Electrical cardioversion (shocking the heart out of an abnormal rhythm).

(i) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(ii) Skin burns on chest.

(K) Stress testing.

(i) Acute myocardial infarction (heart attack).

(ii) Heart arrhythmias (abnormal heart rhythm), possibly life threatening.

(L) Transesophageal echocardiography (ultrasound exam of the heart from inside the throat).

(i) Sore throat.

(ii) Vocal cord damage.

(iii) Esophageal perforation (hole or tear in tube from mouth to stomach).

(M) Circulatory assist devices (devices to help heart pump blood).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Hemorrhage (severe bleeding) possibly leading to sudden death.

(xi) Hemolysis (blood cells get broken apart).

(xii) Right heart failure (poor functioning of the side of heart not assisted by device).

(xiii) Acquired von Willebrand syndrome (platelets do not work).

(xiv) Arrhythmia (irregular or abnormal heart rhythm).

(xv) Cardiac or vascular injury or perforation (hole in heart or blood vessel).

(xvi) Limb ischemia (lack of blood flow or oxygen to limb that device placed through).

(xvii) Device migration or malfunction.

(xviii) Exposure of device/wound break down with need for surgery to cover/reimplant.

(N) Extracorporeal Membrane Oxygenation (ECMO).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention including emergency open heart surgery.

(ii) Arrhythmia (abnormal heart rhythm), possibly life threatening.

(iii) Hemorrhage (severe bleeding).

(iv) Myocardial infarction (heart attack).

(v) Worsening of the condition for which the procedure is being done.

(vi) Sudden death.

(vii) Stroke.

(viii) Contrast nephropathy or other kidney injury (kidney damage due to the contrast agent used during the procedure or procedure itself).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Thrombocytopenia (low platelets) or other coagulopathy (blood thinning).

(xi) Vascular or cardiac perforation (hole in blood vessel or heart).

(xii) Seizure.

(xiii) Device migration or malfunction.

(xiv) Ischemia to limb (lack of blood flow or oxygen to limb that device placed through).

(xv) Thromboembolism (blood clots in blood vessels or heart and possibly traveling to blood vessels in lungs).

(2) Vascular.

(A) Open surgical repair of aortic, subclavian, iliac, or other artery aneurysms or occlusions, arterial or venous bypass or other vascular surgery.

(i) Hemorrhage (severe bleeding).

(ii) Paraplegia (unable to move limbs) (for surgery involving the aorta or other blood vessels to the spine).

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke (for surgery involving blood vessels supplying the neck or head).

(vi) Kidney damage.

(vii) Myocardial infarction (heart attack).

(viii) Infection of graft (material used to repair blood vessel).

(B) Angiography (inclusive of aortography, arteriography, venography) - Injection of contrast material into blood vessels.

(i) Injury to or occlusion (blocking) of artery which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(C) Angioplasty (intravascular dilatation technique).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(D) Endovascular stenting (placement of permanent tube into blood vessel to open it) of any portion of the aorta, iliac or carotid artery or other (peripheral) arteries or veins.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(x) Failure of procedure or injury to blood vessel requiring stent (small, permanent tube placed in blood vessel to keep it open) placement or open surgery.

(xi) Change in procedure to open surgical procedure.

(xii) Failure to place stent/endoluminal graft (stent with fabric covering it).

(xiii) Stent migration (stent moves from location in which it was placed).

(xiv) Impotence (difficulty with or inability to obtain penile erection) (for abdominal aorta and iliac artery procedures).

(E) Vascular thrombolysis (removal or dissolving of blood clots) - percutaneous (through the skin) (mechanical or chemical).

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied by the artery or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Stroke and/or seizure (for procedures involving blood vessels supplying the spine, arms, neck or head).

(vi) Contrast-related, temporary blindness or memory loss (for studies of the blood vessels of the brain).

(vii) Paralysis (inability to move) and inflammation of nerves (for procedures involving blood vessels supplying the spine).

(viii) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(ix) Kidney injury or failure which may be temporary or permanent (for procedures using certain mechanical thrombectomy devices).

(x) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere

(xi) Increased risk of bleeding at or away from site of treatment (when using medications to dissolve clots).

(xii) For arterial procedures: distal embolus (fragments of blood clot may travel and block other blood vessels with possible injury to the supplied tissue).

(xiii) For venous procedures: pulmonary embolus (fragments of blood clot may travel to the blood vessels in the lungs and cause breathing problems or if severe could be life threatening).

(xiv) Need for emergency surgery.

(F) Angiography with occlusion techniques (including embolization and sclerosis) - therapeutic.

(i) For all embolizations/sclerosis:

(I) Injury to or occlusion (blocking) of blood vessel other than the one intended which may require immediate surgery or other intervention.

(II) Hemorrhage (severe bleeding).

(III) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(IV) Worsening of the condition for which the procedure is being done.

(V) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(VI) Unintended thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(VII) Loss or injury to body parts with potential need for surgery, including death of overlying skin for sclerotherapy/treatment of superficial lesions/vessels and nerve injury with associated pain, numbness or tingling or paralysis (inability to move).

(VIII) Infection in the form of abscess (infected fluid collection) or septicemia (infection of blood stream).

(IX) Nontarget embolization (blocking of blood vessels other than those intended) which can result in injury to tissues supplied by those vessels.

(ii) For procedures involving the thoracic aorta and/or vessels supplying the brain, spinal cord, head, neck or arms, these risks in addition to those under clause (i) of this subparagraph:

(I) Stroke.

(II) Seizure.

(III) Paralysis (inability to move).

(IV) Inflammation or other injury of nerves (for procedures involving blood vessels supplying the spine).

(V) For studies of the blood vessels of the brain: contrast-related, temporary blindness or memory loss.

(iii) For female pelvic arterial embolizations including uterine fibroid embolization, these risks in addition to those under clause (i) of this subparagraph:

(I) Premature menopause with resulting sterility.

(II) Injury to or infection involving the uterus which might necessitate hysterectomy (removal of the uterus) with resulting sterility.

(III) After fibroid embolization: prolonged vaginal discharge.

(IV) After fibroid embolization: expulsion/delayed expulsion of fibroid tissue possibly requiring a procedure to deliver/remove the tissue.

(iv) For male pelvic arterial embolizations, in addition to the risks under clause (i) of this subparagraph: impotence (difficulty with or inability to obtain penile erection).

(v) For embolizations of pulmonary arteriovenous fistulae/malformations, these risks in addition to those under clause (i) of this subparagraph:

(I) New or worsening pulmonary hypertension (high blood pressure in the lung blood vessels).

(II) Paradoxical embolization (passage of air or an occluding device beyond the fistula/malformation and into the arterial circulation) causing blockage of blood flow to tissues supplied by the receiving artery and damage to tissues served (for example the blood vessels supplying the heart (which could cause chest pain and/or heart attack) or brain (which could cause stroke, paralysis (inability to move) or other neurological injury)).

(vi) For varicocele embolization, these risks in addition to those under clause (i) of this subparagraph:

(I) Phlebitis/inflammation of veins draining the testicles leading to decreased size and possibly decreased function of affected testis and sterility (if both sides performed).

(II) Nerve injury (thigh numbness or tingling).

(vii) For ovarian vein embolization/pelvic congestion syndrome embolization: general angiography and embolization risks as listed in clause (i) of this subparagraph.

(viii) For cases utilizing ethanol (alcohol) injection, in addition to the risks under clause (i) of this subparagraph: shock or severe lowering of blood pressure (when more than small volumes are utilized).

(ix) For varicose vein treatments (with angiography) see subparagraph (L) of this paragraph.

(G) Mesenteric angiography with infusional therapy (Vasopressin) for gastrointestinal bleeding.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Ischemia/infarction of supplied or distant vascular beds (reduction in blood flow causing lack of oxygen with injury or death of tissues supplied by the treated vessel or tissues supplied by blood vessels away from the treated site including heart, brain, bowel, extremities).

(viii) Antidiuretic hormone side effects of vasopressin (reduced urine output with disturbance of fluid balance in the body, rarely leading to swelling of the brain).

(H) Inferior vena caval filter insertion and removal.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Worsening of the condition for which the procedure is being done.

(iv) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(v) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere including caval thrombosis (clotting of main vein in abdomen and episodes of swelling of legs).

(vi) Injury to the inferior vena cava (main vein in abdomen).

(vii) Filter migration or fracture (filter could break and/or move from where it was placed).

(viii) Risk of recurrent pulmonary embolus (continued risk of blood clots going to blood vessels in lungs despite filter).

(ix) Inability to remove filter (for "optional"/retrievable filters).

(I) Pulmonary angiography.

(i) Injury to or occlusion (blocking) of blood vessel which may require immediate surgery or other intervention.

(ii) Hemorrhage (severe bleeding).

(iii) Damage to parts of the body supplied or drained by the vessel with resulting loss of use or amputation (removal of body part).

(iv) Worsening of the condition for which the procedure is being done.

(v) Contrast nephropathy (kidney damage due to the contrast agent used during procedure).

(vi) Thrombosis (blood clot forming at or blocking the blood vessel) at access site or elsewhere.

(vii) Cardiac arrhythmia (irregular heart rhythm) or cardiac arrest (heart stops beating).

(viii) Cardiac injury/perforation (heart injury).

(ix) Death.

(J) Percutaneous treatment of pseudoaneurysm (percutaneous thrombin injection through the skin versus compression).

(i) Thrombosis (clotting) of supplying vessel or branches in its territory.

(ii) Allergic reaction to thrombin (agent used for direct injection).

(K) Vascular access - nontunneled catheters, tunneled catheters, implanted access.

(i) Pneumothorax (collapsed lung).

(ii) Injury to blood vessel.

(iii) Hemothorax/hemomediastinum (bleeding into the chest around the lungs or around the heart).

(iv) Air embolism (passage of air into blood vessel and possibly to the heart and/or blood vessels entering the lungs).

(v) Vessel thrombosis (clotting of blood vessel).

(L) Varicose vein treatment (percutaneous (through the skin), via laser, radiofrequency ablation (RFA), chemical or other method) without angiography.

(i) Burns.

(ii) Deep vein thrombosis (blood clots in deep veins).

(iii) Hyperpigmentation (darkening of skin).

(iv) Skin wound (ulcer).

(v) Telangiectatic matting (appearance of tiny blood vessels in treated area).

(vi) Paresthesia and dysesthesia (numbness or tingling in the area or limb treated).

(vii) Injury to blood vessel requiring additional procedure to treat.

(c) Digestive system treatments and procedures.

(1) Cholecystectomy with or without common bile duct exploration.

(A) Pancreatitis.

(B) Injury to the tube between the liver and the bowel.

(C) Retained stones in the tube between the liver and the bowel.

(D) Narrowing or obstruction of the tube between the liver and the bowel.

(E) Injury to the bowel and/or intestinal obstruction.

(2) Bariatric surgery.

(A) Laparoscopic.

(i) Conversion to open procedure.

(ii) Injury to organs.

(iii) Failure of device requiring additional surgical procedure.

(iv) Obstructive symptoms requiring additional surgical procedure.

(v) Development of gallstones (Roux-En-Y).

(vi) Development of metabolic and vitamin disorders (Roux-En-Y).

(vii) Suture line leak with abscess or fistula formation.

(B) Open.

(i) Failure of wound to heal or wound dehiscence (separation of wound).

(ii) Injury to organs.

(iii) Failure of device requiring additional surgical procedure.

(iv) Obstructive symptoms requiring additional surgical procedure.

(v) Development of gallstones (Roux-En-Y).

(vi) Development of metabolic and vitamin disorders (Roux-En-Y).

(3) Pancreatectomy (subtotal or total).

(A) Pancreatitis (subtotal).

(B) Diabetes (total).

(C) Lifelong requirement of enzyme and digestive medication.

(D) Anastomotic leaks.

(4) Total colectomy.

- (A) Permanent ileostomy.
 - (B) Injury to organs.
 - (C) Infection.
- (5) Subtotal colectomy.
- (A) Anastomotic leaks.
 - (B) Temporary colostomy.
 - (C) Infection.
 - (D) Second surgery.
 - (E) Injury to organs.
- (6) Hepatobiliary drainage/intervention including percutaneous transhepatic cholangiography, percutaneous biliary drainage, percutaneous cholecystostomy, biliary stent placement (temporary or permanent), biliary stone removal/therapy.
- (A) Leakage of bile at the skin site or into the abdomen with possible peritonitis (inflammation of the abdominal lining and pain or if severe can be life threatening).
 - (B) Pancreatitis (inflammation of the pancreas).
 - (C) Hemobilia (bleeding into the bile ducts).
 - (D) Cholangitis, cholecystitis, sepsis (inflammation/infection of the bile ducts, gallbladder or blood).
 - (E) Pneumothorax (collapsed lung) or other pleural complications (complication involving chest cavity).
- (7) Gastrointestinal tract stenting.
- (A) Stent migration (stent moves from location in which it was placed).
 - (B) Esophageal/bowel perforation (creation of a hole or tear in the tube from the throat to the stomach or in the intestines).
 - (C) Tumor ingrowth or other obstruction of stent.
 - (D) For stent placement in the esophagus (tube from the throat to the stomach).
 - (i) Tracheal compression (narrowing of windpipe) with resulting or worsening of shortness of breath.
 - (ii) Reflux (stomach contents passing up into esophagus or higher).
 - (iii) Aspiration pneumonia (pneumonia from fluid getting in lungs) (if stent in lower part of the esophagus).
 - (iv) Foreign body sensation (feeling like there is something in throat) (for stent placement in the upper esophagus).
- (d) Ear treatments and procedures.
- (1) Stapedectomy.
 - (A) Diminished or bad taste.
 - (B) Total or partial loss of hearing in the operated ear.
 - (C) Brief or long-standing dizziness.
 - (D) Eardrum hole requiring more surgery.
 - (E) Ringing in the ear.
 - (2) Reconstruction of auricle of ear for congenital deformity or trauma.
 - (A) Less satisfactory appearance compared to possible alternative artificial ear.
 - (B) Exposure of implanted material.
- (3) Tympanoplasty with mastoidectomy.
- (A) Facial nerve paralysis.
 - (B) Altered or loss of taste.
 - (C) Recurrence of original disease process.
 - (D) Total loss of hearing in operated ear.
 - (E) Dizziness.
 - (F) Ringing in the ear.
- (e) Endocrine system treatments and procedures.
- (1) Thyroidectomy.
 - (A) Acute airway obstruction requiring temporary tracheostomy.
 - (B) Injury to nerves resulting in hoarseness or impairment of speech.
 - (C) Injury to parathyroid glands resulting in low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness and muscle irritability.
 - (D) Lifelong requirement of thyroid medication.
 - (2) Parathyroidectomy.
 - (A) Acute airway obstruction requiring temporary tracheostomy.
 - (B) Injury to nerves resulting in hoarseness or impairment of speech.
 - (C) Low blood calcium levels that require extensive medication to avoid serious degenerative conditions, such as cataracts, brittle bones, muscle weakness, and muscle irritability.
 - (3) Adrenalectomy.
 - (A) Loss of endocrine functions.
 - (B) Lifelong requirement for hormone replacement therapy and steroid medication.
 - (C) Damage to kidneys.
 - (4) Other procedures.
 - (5) See also Pancreatectomy under subsection (c)(3) of this section (relating to digestive system treatments and procedures).
 - (f) Eye treatments and procedures.
 - (1) Eye muscle surgery.
 - (A) Additional treatment and/or surgery.
 - (B) Double vision.
 - (C) Partial or total blindness.
 - (2) Surgery for cataract with or without implantation of intraocular lens.
 - (A) Complications requiring additional treatment and/or surgery.
 - (B) Need for glasses or contact lenses.

- (C) Complications requiring the removal of implanted lens.
- (D) Partial or total blindness.
- (3) Retinal or vitreous surgery.
- (A) Complications requiring additional treatment and/or surgery.
- (B) Recurrence or spread of disease.
- (C) Partial or total blindness.
- (4) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma.
- (A) Blindness.
- (B) Nerve damage with loss of use and/or feeling to eye or other areas of face.
- (C) Painful or unattractive scarring.
- (D) Worsening or unsatisfactory appearance.
- (E) Dry eye.
- (5) Photocoagulation and/or cryotherapy.
- (A) Complications requiring additional treatment and/or surgery.
- (B) Pain.
- (C) Partial or total blindness.
- (6) Corneal surgery, such as corneal transplant, refractive surgery and pterygium.
- (A) Complications requiring additional treatment and/or surgery.
- (B) Pain.
- (C) Need for glasses or contact lenses.
- (D) Partial or total blindness.
- (7) Glaucoma surgery by any method.
- (A) Complications requiring additional treatment and/or surgery.
- (B) Worsening of the glaucoma.
- (C) Pain.
- (D) Partial or total blindness.
- (8) Removal of the eye or its contents (enucleation or evisceration).
- (A) Complications requiring additional treatment and/or surgery.
- (B) Worsening or unsatisfactory appearance.
- (C) Recurrence or spread of disease.
- (9) Surgery for penetrating ocular injury, including intraocular foreign body.
- (A) Complications requiring additional treatment and/or surgery.
- (B) Possible removal of eye.
- (C) Pain.
- (D) Partial or total blindness.
- (g) Female genital system treatments and procedures.
- (1) Hysterectomy (abdominal and vaginal).
- (A) Uncontrollable leakage of urine.
- (B) Injury to bladder.
- (C) Sterility.
- (D) Injury to the tube (ureter) between the kidney and the bladder.
- (E) Injury to the bowel and/or intestinal obstruction.
- (F) Need to convert to abdominal incision.
- (G) If a power morcellator in laparoscopic surgery is utilized, include the following risks:
- (i) If cancer is present, may increase the risk of the spread of cancer.
- (ii) Increased risk of damage to adjacent structures.
- (2) All fallopian tube and ovarian surgery with or without hysterectomy, including removal and lysis of adhesions.
- (A) Injury to the bowel and/or bladder.
- (B) Sterility.
- (C) Failure to obtain fertility (if applicable).
- (D) Failure to obtain sterility (if applicable).
- (E) Loss of ovarian functions or hormone production from ovary(ies).
- (F) If performed with hysterectomy, all associated risks under paragraph (1) of this subsection.
- (G) For fallopian tube occlusion (for sterilization with or without hysterectomy), see subparagraph (14) of this paragraph.
- (3) Removing fibroids (uterine myomectomy).
- (A) Injury to bladder.
- (B) Sterility.
- (C) Injury to the tube (ureter) between the kidney and the bladder.
- (D) Injury to the bowel and/or intestinal obstruction.
- (E) May need to convert to hysterectomy.
- (F) If a power morcellator in laparoscopic surgery is utilized, include the following risks:
- (i) If cancer is present, may increase the risk of the spread of cancer.
- (ii) Increased risk of damage to adjacent structures.
- (4) Uterine suspension.
- (A) Uncontrollable leakage of urine.
- (B) Injury to bladder.
- (C) Injury to the tube (ureter) between the kidney and the bladder.
- (D) Injury to the bowel and/or intestinal obstruction.
- (5) Removal of the nerves to the uterus (presacral neurectomy).

- (A) Uncontrollable leakage of urine.
 (B) Injury to bladder.
 (C) Injury to the tube (ureter) between the kidney and the bladder.
 (D) Injury to the bowel and/or intestinal obstruction.
 (E) Hemorrhage (severe bleeding).
- (6) Removal of the cervix.
 (A) Uncontrollable leakage of urine.
 (B) Injury to bladder.
 (C) Sterility.
 (D) Injury to the tube (ureter) between the kidney and the bladder.
 (E) Injury to the bowel and/or intestinal obstruction.
 (F) Need to convert to abdominal incision.
- (7) Repair of vaginal hernia (anterior and/or posterior colporrhaphy and/or enterocele repair).
 (A) Uncontrollable leakage of urine.
 (B) Injury to bladder.
 (C) Sterility.
 (D) Injury to the tube (ureter) between the kidney and the bladder.
 (E) Injury to the bowel and/or intestinal obstruction.
 (F) Mesh erosion (with damage to vagina and adjacent tissue).
- (8) Abdominal suspension of the bladder (retropubic urethropexy).
 (A) Uncontrollable leakage of urine.
 (B) Injury to bladder.
 (C) Injury to the tube (ureter) between the kidney and the bladder.
 (D) Injury to the bowel and/or intestinal obstruction.
- (9) Conization of cervix.
 (A) Hemorrhage (severe bleeding) which may result in hysterectomy.
 (B) Sterility.
 (C) Injury to bladder.
 (D) Injury to rectum.
- (10) Dilation and curettage of uterus (diagnostic/therapeutic).
 (A) Possible hysterectomy.
 (B) Perforation (hole) created in the uterus.
 (C) Sterility.
 (D) Injury to bowel and/or bladder.
 (E) Abdominal incision and operation to correct injury.
- (11) Surgical abortion/dilation and curettage/dilation and evacuation.
 (A) Possible hysterectomy.
 (B) Perforation (hole) created in the uterus.
 (C) Sterility.
 (D) Injury to the bowel and/or bladder.
 (E) Abdominal incision and operation to correct injury.
 (F) Failure to remove all products of conception.
- (12) Medical abortion/non-surgical.
 (A) Hemorrhage with possible need for surgical intervention.
 (B) Failure to remove all products of conception.
 (C) Sterility.
- (13) Selective salpingography and tubal reconstruction.
 (A) Perforation (hole) created in the uterus or Fallopian tube.
 (B) Future ectopic pregnancy (pregnancy outside of the uterus).
 (C) Pelvic infection.
- (14) Fallopian tube occlusion (for sterilization with or without hysterectomy).
 (A) Perforation (hole) created in the uterus or Fallopian tube.
 (B) Future ectopic pregnancy (pregnancy outside of the uterus).
 (C) Pelvic infection.
 (D) Failure to obtain sterility.
- (15) Hysteroscopy.
 (A) Perforation (hole) created in the uterus.
 (B) Fluid overload/electrolyte imbalance.
 (C) Possible hysterectomy.
 (D) Abdominal incision to correct injury.
- (h) Hematic and lymphatic system.
 (1) Transfusion of blood and blood components.
 (A) Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.
 (B) Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.
 (C) Severe allergic reaction, potentially fatal.
- (2) Splenectomy.
 (A) Susceptibility to infections and increased severity of infections.
 (B) Increased immunization requirements.
- (i) Breast surgery (non-cosmetic).
 (1) Radical or modified radical mastectomy.
 (A) Limitation of movement of shoulder and arm.
 (B) Permanent swelling of the arm.

- (C) Loss of the skin of the chest requiring skin graft.
- (D) Recurrence of malignancy, if present.
- (E) Decreased sensation or numbness of the inner aspect of the arm and chest wall.
- (2) Simple mastectomy.
 - (A) Loss of skin of the chest requiring skin graft.
 - (B) Recurrence of malignancy, if present.
 - (C) Decreased sensation or numbness of the nipple.
- (3) Lumpectomy.
 - (A) Loss of skin of the chest requiring skin graft.
 - (B) Recurrence of malignancy, if present.
 - (C) Decreased sensation or numbness of the nipple.
- (4) Open biopsy.
 - (A) Loss of skin of the chest requiring skin graft.
 - (B) Recurrence of malignancy, if present.
 - (C) Decreased sensation or numbness of the nipple.
- (j) Male genital system.
 - (1) Orchidopexy (reposition of testis(es)).
 - (A) Removal of testicle.
 - (B) Atrophy (shriveling) of the testicle with loss of function.
 - (2) Orchiectomy (removal of the testis(es)).
 - (A) Decreased sexual desire.
 - (B) Difficulties with penile erection.
 - (C) Permanent sterility (inability to father children) if both testes are removed.
 - (3) Vasectomy.
 - (A) Loss of testicle.
 - (B) Failure to produce permanent sterility (inability to father children).
 - (4) Circumcision.
 - (A) Injury to penis.
 - (B) Need for further surgery.
- (k) Maternity and related cases.
 - (1) Delivery (vaginal).
 - (A) Injury to bladder and/or rectum, including a fistula (hole) between bladder and vagina and/or rectum and vagina.
 - (B) Hemorrhage (severe bleeding) possibly requiring blood administration and/or hysterectomy (removal of uterus) and/or artery ligation (tying off) to control.
 - (C) Sterility (inability to get pregnant).
 - (D) Brain damage, injury or even death occurring to the fetus before or during labor and/or vaginal delivery whether or not the cause is known.
 - (2) Delivery (cesarean section).
 - (A) Injury to bowel and/or bladder.
 - (B) Sterility (inability to get pregnant).
 - (C) Injury to ureter (tube between kidney and bladder).
 - (D) Brain damage, injury or even death occurring to the fetus before or during labor and/or cesarean delivery whether or not the cause is known.
 - (E) Uterine disease or injury requiring hysterectomy (removal of uterus).
 - (3) Cerclage.
 - (A) Premature labor.
 - (B) Injury to bowel and/or bladder.
 - (C) Rupture to membranes and possible infection.
 - (l) Musculoskeletal system.
 - (1) Arthroplasty of any joints with mechanical device.
 - (A) Impaired function such as stiffness, limp, or change in limb length.
 - (B) Blood vessel or nerve injury.
 - (C) Pain.
 - (D) Blood clot in limb or lung.
 - (E) Failure of bone to heal.
 - (F) Infection.
 - (G) Removal or replacement of any implanted device or material.
 - (H) Dislocation or loosening requiring additional surgery.
 - (I) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.
 - (2) Arthroscopy of any joint.
 - (A) Blood vessel or nerve injury.
 - (B) Continued pain.
 - (C) Stiffness of joint.
 - (D) Blood clot in limb or lung.
 - (E) Joint infection.
 - (F) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.
 - (3) Open reduction with internal fixation.
 - (A) Impaired function such as stiffness, limp, or change in limb length.
 - (B) Blood vessel or nerve injury.
 - (C) Pain.
 - (D) Blood clot in limb or lung.
 - (E) Failure of bone to heal.
 - (F) Infection.
 - (G) Removal or replacement of any implanted device or material.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(4) Osteotomy.

(A) Impaired function such as stiffness, limp, or change in limb length.

(B) Blood vessel or nerve injury.

(C) Pain.

(D) Blood clot in limb or lung.

(E) Failure of bone to heal.

(F) Infection.

(G) Removal or replacement of any implanted device or material.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(5) Ligamentous reconstruction of joints.

(A) Continued instability of the joint.

(B) Arthritis.

(C) Continued pain.

(D) Stiffness of joint.

(E) Blood vessel or nerve injury.

(F) Impaired function and/or scarring.

(G) Blood clot in limb or lung.

(H) If performed on a child age 12 or under, include the following additional risks: problems with appearance, use, or growth requiring additional surgery.

(6) Vertebroplasty/kyphoplasty.

(A) Nerve/spinal cord injury.

(B) Need for emergency surgery.

(C) Embolization of cement (cement passes into blood vessels and possibly all the way to the lungs).

(D) Collapse of adjacent vertebrae (bones in spine).

(E) Leak of cerebrospinal fluid (fluid around the brain and spinal cord).

(F) Pneumothorax (collapsed lung).

(G) Failure to relieve pain.

(H) Rib fracture.

(7) If the following procedures are performed on a child age 12 or under, problems with appearance, use, or growth requiring additional surgery should be disclosed.

(A) Arthrotomy (opening of joint).

(B) Closed reduction with or without pin or external fixation.

(C) Surgical management of open wound.

(D) Partial excision or removal of bone.

(E) Removal of external fixation device.

(F) Traction or casting with or without manipulation for reduction.

(8) Amputation of limb.

(A) Pain and/or phantom sensation in removed limb.

(B) Need for further surgery.

(C) Infection.

(D) Hemorrhage (severe bleeding).

(E) Difficulty with prosthesis fitting.

(m) Nervous system treatments and procedures.

(1) Craniotomy, craniectomy or cranioplasty.

(A) Loss of brain function such as memory and/or ability to speak.

(B) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).

(C) Stroke (damage to brain resulting in loss of one or more functions).

(D) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).

(E) Weakness, paralysis, loss of coordination.

(F) Cerebrospinal fluid leak with potential for severe headaches.

(G) Meningitis (infection of coverings of brain and spinal cord).

(H) Brain abscess.

(I) Persistent vegetative state (not able to communicate or interact with others).

(J) Hydrocephalus (abnormal fluid buildup causing pressure in the brain).

(K) Seizures (uncontrolled nerve activity).

(L) Need for permanent breathing tube and/or permanent feeding tube.

(2) Cranial nerve operations.

(A) Weakness, numbness, impaired muscle function or paralysis.

(B) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).

(C) Seizures (uncontrolled nerve activity).

(D) New or different pain.

(E) Stroke (damage to brain resulting in loss of one or more functions).

(F) Persistent vegetative state (not able to communicate or interact with others).

(G) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).

(H) Cerebrospinal fluid leak with potential for severe headaches.

- (I) Meningitis (infection of coverings of brain and spinal cord).
 - (J) Need for prolonged nursing care.
 - (K) Need for permanent breathing tube and/or permanent feeding tube.
- (3) Spine operation, including laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; diagnosis; pain; deformity; mechanical instability; injury; removal of tumor, abscess or hematoma (excluding coccygeal operations).
- (A) Weakness, pain, numbness or clumsiness.
 - (B) Impaired muscle function or paralysis.
 - (C) Incontinence, impotence or impaired bowel function (loss of bowel/bladder control and/or sexual function).
 - (D) Migration of implants (movement of implanted devices).
 - (E) Failure of implants (breaking of implanted devices).
 - (F) Adjacent level degeneration (breakdown of spine above and/or below the level treated).
 - (G) Cerebrospinal fluid leak with potential for severe headaches.
 - (H) Meningitis (infection of coverings of brain and spinal cord).
 - (I) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).
 - (J) Unstable spine (abnormal movement between bones and/or soft tissues of the spine).
- (4) Peripheral nerve operation; nerve grafts, decompression, transposition or tumor removal; neurorrhaphy, neurectomy or neurolysis.
- (A) Numbness.
 - (B) Impaired muscle function.
 - (C) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).
 - (D) Continued, increased or different pain.
 - (E) Weakness.
- (5) Transphenoidal hypophysectomy or other pituitary gland operation.
- (A) Cerebrospinal fluid leak with potential for severe headaches.
 - (B) Necessity for hormone replacement.
 - (C) Recurrence or continuation of the condition that required this operation.
 - (D) Deformity or perforation of nasal septum (hole in wall between the right and left halves of the nose).
 - (E) Facial nerve injury resulting in disfigurement (loss of nerve function controlling muscles in face).
 - (F) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).
- (G) Stroke (damage to brain resulting in loss of one or more functions).
 - (H) Persistent vegetative state (not able to communicate or interact with others).
 - (I) Headaches.
- (6) Cerebrospinal fluid shunting procedure or revision.
- (A) Shunt obstruction (blockage of shunt/tubing causing it to stop draining adequately).
 - (B) Malposition or migration of shunt/tubing (improper positioning or later movement of shunt/tubing causing it to stop draining adequately).
 - (C) Seizures (uncontrolled nerve activity).
 - (D) Recurrence or continuation of brain dysfunction.
 - (E) Injury to internal organs of the chest or abdomen.
 - (F) Brain injury.
 - (G) Stroke (damage to brain resulting in loss of one or more functions).
 - (H) Persistent vegetative state (not able to communicate or interact with others).
 - (I) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).
 - (J) Cerebrospinal fluid leak with potential for severe headaches.
 - (K) Meningitis (infection of coverings of brain and spinal cord).
 - (L) Need for prolonged nursing care.
 - (M) Need for permanent breathing tube and/or permanent feeding tube.
- (7) Elevation of depressed skull fracture.
- (A) Loss of brain function such as memory and/or ability to speak.
 - (B) Recurrence, continuation or worsening of the condition that required this operation (no improvement or symptoms made worse).
 - (C) Loss of senses (blindness, double vision, deafness, smell, numbness, taste).
 - (D) Weakness, paralysis, loss of coordination.
 - (E) Cerebrospinal fluid leak with potential for severe headaches.
 - (F) Meningitis (infection of coverings of brain and spinal cord).
 - (G) Brain abscess.
 - (H) Persistent vegetative state (not able to communicate or interact with others).
 - (I) Seizures (uncontrolled nerve activity).
 - (J) Need for permanent breathing tube and/or permanent feeding tube.
- (n) Radiology.
 - (1) Splenoportography (needle injection of contrast media into the spleen).

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Injury to the spleen requiring blood transfusion and/or removal of the spleen.

(2) Chemoembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Risks of the chemotherapeutic agent(s) utilized.

(E) Cholecystitis (inflammation of the gallbladder) (for liver or other upper GI embolizations).

(F) Abscess (infected fluid collection) in the liver or other embolized organ requiring further intervention.

(G) Biloma (collection of bile in or near the liver requiring drainage) (for liver embolizations).

(3) Radioembolization.

(A) All associated risks as listed under subsection (b)(2)(B) of this section.

(B) Tumor lysis syndrome (rapid death of tumor cells, releasing their contents which can be harmful).

(C) Injury to or failure of liver (or other organ in which tumor is located).

(D) Radiation complications: pneumonitis (inflammation of lung) which is potentially fatal; inflammation of stomach, intestines, gallbladder, pancreas; stomach or intestinal ulcer; scarring of liver.

(4) Thermal and other ablative techniques for treatment of tumors (for curative intent or palliation) including radiofrequency ablation, microwave ablation, cryoablation, and high intensity focused ultrasound (HIFU).

(A) Injury to tumor-containing organ or adjacent organs/structures.

(B) Injury to nearby nerves potentially resulting in temporary or chronic (continuing) pain and/or loss of use and/or feeling.

(C) Failure to completely treat tumor.

(5) TIPS (Transjugular Intrahepatic Portosystemic Shunt) and its variants such as DIPS (Direct Intrahepatic Portocaval Shunt).

(A) All associated risks as listed under subsection (b)(2)(B) - (D) of this section.

(B) Hepatic encephalopathy (confusion/decreased ability to think).

(C) Liver failure or injury.

(D) Gallbladder injury.

(E) Hemorrhage (severe bleeding).

(F) Recurrent ascites (fluid building up in abdomen) and/or bleeding.

(G) Kidney failure.

(H) Heart failure.

(I) Death.

(6) Myelography.

(A) Chronic (continuing) pain.

(B) Nerve injury with loss of use and/or feeling.

(C) Transient (temporary) headache, nausea, and/or vomiting.

(D) Numbness.

(E) Seizure.

(7) Percutaneous abscess/fluid collection drainage (percutaneous abscess/seroma/lymphocele drainage and/or sclerosis (inclusive of percutaneous, transgluteal, transrectal and transvaginal routes)).

(A) Sepsis (infection in the blood stream), possibly resulting in shock (severe decrease in blood pressure).

(B) Injury to nearby organs.

(C) Hemorrhage (severe bleeding).

(D) Infection of collection which was not previously infected, or additional infection of abscess.

(8) Procedures utilizing prolonged fluoroscopy.

(A) Skin injury (such as epilation (hair loss), burns, or ulcers).

(B) Cataracts (for procedures in the region of the head).

(o) Respiratory system treatments and procedures.

(1) Biopsy and/or excision (removal) of lesion of larynx, vocal cords, trachea.

(A) Loss or change of voice.

(B) Swallowing or breathing difficulties.

(C) Perforation (hole) or fistula (connection) in esophagus (tube from throat to stomach).

(2) Rhinoplasty (surgery to change the shape of the nose) or nasal reconstruction with or without nasal septoplasty (surgical procedure to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(A) Deformity of skin, bone or cartilage.

(B) Creation of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.

(3) Submucous resection of nasal septum or nasal septoplasty (surgery to remove blockage in or straighten the bone and cartilage dividing the space between the two nostrils).

(A) Persistence, recurrence or worsening of the obstruction.

(B) Perforation of nasal septum (hole in the bone and/or cartilage dividing the space between the right and left halves of the nose) with dryness and crusting.

(C) External deformity of the nose.

(4) Sinus surgery/endoscopic sinus surgery.

(A) Spinal fluid leak.

(B) Visual loss or other eye injury.

(C) Numbness in front teeth and palate (top of mouth).

- (D) Loss or reduction in sense of taste or smell.
 - (E) Recurrence of disease.
 - (F) Empty Nose Syndrome (sensation of nasal congestion, sensation of not being able to take in adequate air through nose).
 - (G) Injury to tear duct causing drainage of tears down the cheek.
 - (H) Brain injury and/or infection.
 - (I) Injury to nasal septum (the bone and cartilage dividing the space between the two nostrils).
 - (J) Nasal obstruction.
- (5) Lung biopsy (removal of small piece of tissue from inside of lung).
- (A) Air leak with pneumothorax (leak of air from lung to inside of chest causing the lung to collapse) with need for insertion of chest tube or repeat surgery.
 - (B) Hemothorax (blood in the chest around the lung) possibly requiring additional procedures.
 - (C) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).
- (6) Segmental resection of lung (removal of a portion of a lung).
- (A) Hemothorax (blood in the chest around the lung).
 - (B) Abscess (infected fluid collection) in chest.
 - (C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.
 - (D) Need for additional surgery.
- (7) Thoracotomy (surgery to reach the inside of the chest).
- (A) Hemothorax (blood in the chest around the lung).
 - (B) Abscess (infected fluid collection) in chest.
 - (C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.
 - (D) Need for additional surgery.
- (8) VATS - video-assisted thoracoscopic surgery (camera-assisted surgery to reach the inside of the chest through small incisions)
- (A) Hemothorax (blood in the chest around the lung).
 - (B) Abscess (infected fluid collection) in chest.
 - (C) Air leak with pneumothorax (leak of air from lung inside of chest causing the lung to collapse) with need for insertion of chest drainage tube into space between lung and chest wall or repeat surgery.
 - (D) Need for additional surgery.
 - (E) Need to convert to open surgery.
- (9) Percutaneous (puncture through the skin instead of incision) or Open (surgical incision) tracheostomy.
- (A) Loss of voice.
 - (B) Breathing difficulties.
- (C) Pneumothorax (collapsed lung) with need for insertion of chest tube.
- (D) Hemothorax (blood in the chest around the lung).
 - (E) Scarring in trachea (windpipe).
 - (F) Fistula (connection) between trachea into esophagus (tube from throat to stomach) or great vessels.
 - (G) Bronchospasm (constriction of the airways leading to trouble breathing).
 - (H) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).
- (10) Bronchoscopy (insertion of a camera into the airways of the neck and chest).
- (A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).
 - (B) Pneumothorax (collapsed lung) with need for insertion of chest tube.
 - (C) Pneumomediastinum (air enters the space around the airways including the space around the heart).
 - (D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).
 - (E) Bronchospasm (constriction of the airways leading to trouble breathing).
 - (F) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).
- (11) Endobronchial valve placement (device inserted into airways in the lung that controls air movement into and out of abnormal portions of a lung).
- (A) Mucosal injury (damage to lining of airways) including perforation (hole in the airway).
 - (B) Pneumothorax (collapsed lung) with need for insertion of chest tube.
 - (C) Pneumomediastinum (air enters the space around the airways including the space around the heart).
 - (D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).
 - (E) Migration (movement) of the stent from its original position.
 - (F) Airway blockage, potentially life threatening.
 - (G) Stent blockage.
 - (H) Worsening of chronic obstructive pulmonary disease (worsening of emphysema).
 - (I) Respiratory failure (need for breathing tube placement with ventilator support).
 - (J) Bronchospasm (constriction of the airways leading to trouble breathing).

(K) Hemoptysis (coughing up blood which can result in trouble breathing and the need to be placed on a ventilator or breathing machine and oxygen).

(L) Recurrent infections.

(12) Endobronchial balloon dilatation with or without stent placement (placement of tube to keep airway open).

(A) Bronchial rupture (tearing of the airway) with need for additional surgery.

(B) Pneumothorax (collapsed lung) with need for insertion of chest tube.

(C) Pneumomediastinum (air enters the space around the airways including the space around the heart).

(D) Injury to vocal cords, laryngospasm (irritation/spasm of the vocal cords) or laryngeal edema (swelling of the vocal cords).

(E) Migration (movement) of the stent from its original position.

(F) Airway blockage, potentially life threatening.

(G) Stent blockage.

(H) Stent fracture (broken stent).

(I) Recurrent infections.

(J) Stent erosion into adjacent structures (stent wears a hole through the airway and injures nearby tissues).

(K) Hemoptysis (coughing up blood which can result in respiratory distress and the need to be placed on a ventilator or breathing machine and oxygen).

(13) Mediastinoscopy (insertion of a camera into the space behind the breastbone and between the lungs) with or without biopsy (removal of tissue).

(A) Hemorrhage (severe bleeding) requiring open surgery.

(B) Nerve injury causing vocal cord paralysis or poor function.

(C) Pneumothorax (collapsed lung).

(D) Tracheal injury (damage to the airway/windpipe).

(14) Pleurodesis (procedure to prevent fluid build-up in space between the lung and chest wall).

(A) Respiratory failure (need for breathing tube placement).

(B) Empyema (infection/pus in the space around the lung).

(p) Urinary system.

(1) Partial nephrectomy (removal of part of the kidney).

(A) Incomplete removal of stone(s) or tumor, if present.

(B) Blockage of urine.

(C) Leakage of urine at surgical site.

(D) Injury to or loss of the kidney.

(E) Damage to organs next to kidney.

(2) Radical nephrectomy (removal of kidney and adrenal gland for cancer).

(A) Loss of the adrenal gland (gland on top of kidney that makes certain hormones/chemicals the body needs).

(B) Incomplete removal of tumor.

(C) Damage to organs next to kidney.

(3) Nephrectomy (removal of kidney).

(A) Incomplete removal of tumor if present.

(B) Damage to organs next to kidney.

(C) Injury to or loss of the kidney.

(4) Nephrolithotomy and pyelolithotomy (removal of kidney stone(s)).

(A) Incomplete removal of stone(s).

(B) Blockage of urine.

(C) Leakage of urine at surgical site.

(D) Injury or loss of the kidney.

(E) Damage to organs next to kidney.

(5) Pyeloureteroplasty (pyeloplasty or reconstruction of the kidney drainage system).

(A) Blockage of urine.

(B) Leakage of urine at surgical site.

(C) Injury to or loss of the kidney.

(D) Damage to organs next to kidney.

(6) Exploration of kidney or perinephric mass.

(A) Incomplete removal of stone(s) or tumor, if present.

(B) Leakage of urine at surgical site.

(C) Injury to or loss of the kidney.

(D) Damage to organs next to kidney.

(7) Ureteroplasty (reconstruction of ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of the stone or tumor (when applicable).

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(E) Damage to or loss of the ureter.

(8) Ureterolithotomy (surgical removal of stone(s) from ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of stone.

(C) Blockage of urine.

(D) Damage to organs next to ureter.

(E) Damage to or loss of ureter.

(9) Ureterectomy (partial/complete removal of ureter (tube between kidney and bladder)).

(A) Leakage of urine at surgical site.

(B) Incomplete removal of stone.

- (C) Blockage of urine.
 (D) Damage to organs next to ureter.
- (10) Ureterolysis (partial/complete removal of ureter (tube between kidney and bladder from adjacent tissue)).
 (A) Leakage of urine at surgical site.
 (B) Blockage of urine.
 (C) Damage to organs next to ureter.
 (D) Damage to or loss of ureter.
- (11) Ureteral reimplantation (reinserting ureter (tube between kidney and bladder) into the bladder).
 (A) Leakage of urine at surgical site.
 (B) Blockage of urine.
 (C) Damage to or loss of ureter.
 (D) Backward flow of urine from bladder into ureter.
 (E) Damage to organs next to ureter.
- (12) Prostatectomy (partial or total removal of prostate).
 (A) Leakage of urine at surgical site.
 (B) Blockage of urine.
 (C) Incontinence (difficulty with control of urine flow).
 (D) Semen passing backward into bladder.
 (E) Difficulty with penile erection (possible with partial and probable with total prostatectomy).
- (13) Total cystectomy (removal of bladder).
 (A) Probable loss of penile erection and ejaculation in the male.
 (B) Damage to organs next to bladder.
 (C) This procedure will require an alternate method of urinary drainage.
 (D) Chronic (continuing) swelling of thighs, legs and feet.
 (E) Recurrence or spread of cancer if present.
- (14) Radical cystectomy.
 (A) Probable loss of penile erection and ejaculation in the male.
 (B) Damage to organs next to bladder.
 (C) This procedure will require an alternate method of urinary drainage.
 (D) Chronic (continuing) swelling of thighs, legs and feet.
 (E) Recurrence or spread of cancer if present.
- (15) Partial cystectomy (partial removal of bladder).
 (A) Leakage of urine at surgical site.
 (B) Incontinence (difficulty with control of urine flow).
 (C) Backward flow of urine from bladder into ureter (tube between kidney and bladder).
 (D) Blockage of urine.
 (E) Damage to organs next to bladder.
- (16) Urinary diversion (ileal conduit, colon conduit).
 (A) Blood chemistry abnormalities requiring medication.
 (B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).
 (C) Leakage of urine at surgical site.
 (D) This procedure will require an alternate method of urinary drainage.
- (17) Ureterosigmoidostomy (placement of kidney drainage tubes into the large bowel (intestine)).
 (A) Blood chemistry abnormalities requiring medication.
 (B) Development of stones, strictures or infection in the kidneys, ureter or bowel (intestine).
 (C) Leakage of urine at surgical site.
 (D) Difficulty in holding urine in the rectum.
- (18) Urethroplasty (construction/reconstruction of drainage tube from bladder).
 (A) Leakage of urine at surgical site.
 (B) Stricture formation (narrowing of urethra (tube from bladder to outside)).
 (C) Need for additional surgery.
- (19) Percutaneous nephrostomy/stenting/stone removal.
 (A) Pneumothorax or other pleural complications (collapsed lung or filling of the chest cavity on the same side with fluid).
 (B) Septic shock/bacteremia (infection of the blood stream with possible shock/severe lowering of blood pressure) when pyonephrosis (infected urine in the kidney) present.
 (C) Bowel (intestinal) injury.
 (D) Blood vessel injury with or without significant bleeding.
- (20) Dialysis (technique to replace functions of kidney and clean blood of toxins).
 (A) Hemodialysis.
 (i) Hypotension (low blood pressure).
 (ii) Hypertension (high blood pressure).
 (iii) Air embolism (air bubble in blood vessel) resulting in possible death or paralysis.
 (iv) Cardiac arrhythmias (irregular heart rhythms).
 (v) Infections of blood stream, access site, or blood borne (for example: Hepatitis B, C, or HIV).
 (vi) Hemorrhage (severe bleeding as a result of clotting problems or due to disconnection of the bloodline).
 (vii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.
 (viii) Allergic reactions.
 (ix) Chemical imbalances and metabolic disorders (unintended change in blood minerals).
 (x) Pyrogenic reactions (fever).
 (xi) Hemolysis (rupture of red blood cells).

(xii) Graft/fistula damage including bleeding, aneurysm, formation (ballooning of vessel), clotting (closure) of graft/fistula.

(B) Peritoneal dialysis.

(i) Infections, including peritonitis (inflammation or irritation of the tissue lining the inside wall of abdomen and covering organs), catheter infection and catheter exit site infection.

(ii) Development of hernias of umbilicus (weakening of abdominal wall or muscle).

(iii) Hypertension (high blood pressure).

(iv) Hypotension (low blood pressure).

(v) Hydrothorax (fluid in chest cavity).

(vi) Arrhythmia (irregular heart rhythm).

(vii) Perforation of the bowel.

(viii) Sclerosis or scarring of the peritoneum.

(ix) Weight gain leading to obesity.

(x) Abdominal discomfort/distension.

(xi) Heartburn or reflux.

(xii) Increase in need for anti-diabetic medication.

(xiii) Muscle weakness.

(xiv) Dehydration (extreme loss of body fluid).

(xv) Chemical imbalances and metabolic disorders (unintended change in blood minerals).

(xvi) Allergic reactions.

(xvii) Nausea, vomiting, cramps, headaches, and mild confusion during and/or temporarily after dialysis.

(q) Psychiatric procedures.

(1) Electroconvulsive therapy with modification by intravenous muscle relaxants and sedatives.

(A) Memory changes of events prior to, during, and immediately following the treatment.

(B) Fractures or dislocations of bones.

(C) Significant temporary confusion requiring special care.

(2) Other Procedures. No other procedures are assigned at this time.

(r) Radiation therapy. A child is defined for the purpose of this subsection as an individual who is not physiologically mature as determined by the physician using the appropriate medical parameters.

(1) Head and neck.

(A) Early reactions.

(i) Reduced and sticky saliva, loss of taste and appetite, altered sense of smell, nausea.

(ii) Sore throat, difficulty swallowing, weight loss, fatigue.

(iii) Skin changes: redness, irritation, scaliness, blistering or ulceration, color change, thickening, hair loss.

(iv) Hoarseness, cough, loss of voice, and swelling of airway.

(v) Blockage and crusting of nasal passages.

(vi) Inflammation of ear canal, feeling of "stopped up" ear, hearing loss, dizziness.

(vii) Dry and irritable eye(s).

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Dry mouth and altered sense, or loss, of taste.

(ii) Tooth decay and gum changes.

(iii) Bone damage, especially in jaws.

(iv) Stiffness and limitation of jaw movement.

(v) Changes in skin texture and/or coloration, permanent hair loss, and scarring of skin.

(vi) Swelling of tissues, particularly under the chin.

(vii) Throat damage causing hoarseness, pain or difficulty breathing or swallowing.

(viii) Eye damage causing dry eye(s), cataract, loss of vision, or loss of eye(s).

(ix) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(x) Brain, spinal cord or nerve damage causing alteration of thinking ability or memory, and/or loss of strength, feeling or coordination in any part of the body.

(xi) Pituitary or thyroid gland damage requiring long-term hormone replacement therapy.

(xii) In children, there may be additional late reactions.

(I) Disturbance of bone and tissue growth.

(II) Bone damage to face causing abnormal development.

(III) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(IV) Second cancers developing in the irradiated area.

(2) Central nervous system.

(A) Early reactions.

(i) Skin and scalp reaction with redness, irritation, scaliness, blistering, ulceration, change in color, thickening, hair loss.

(ii) Nausea, vomiting, headaches.

(iii) Fatigue, drowsiness.

(iv) Altered sense of taste or smell.

(v) Inflammation of ear canal, feeling of "stopped-up" ear, hearing loss, dizziness.

(vi) Depression of blood count leading to increased risk of infection and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Permanent hair loss of variable degrees, altered regrowth, texture and color of hair.

(ii) Persistent drowsiness and tiredness.

(iii) Brain damage causing a loss of some degree of thinking ability or memory, or personality changes.

(iv) Scarring of skin.

(v) Spinal cord or nerve damage causing loss of strength, feeling or coordination in any part of the body.

(vi) Damage to eye(s), or optic nerve(s) causing loss of vision.

(vii) Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.

(viii) Pituitary gland damage requiring long-term hormone replacement therapy.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to face, or pelvis causing stunting of bone growth and/or abnormal development.

(IV) Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (IQ).

(V) Second cancers developing in the irradiated area.

(3) Thorax.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, change in color, thickening, hair loss.

(ii) Inflammation of esophagus causing pain on swallowing, heartburn, or sense of obstruction.

(iii) Loss of appetite, nausea, vomiting.

(iv) Weight loss, weakness, vomiting.

(v) Inflammation of the lung with pain, fever and cough.

(vi) Inflammation of the heart sac with chest pain and palpitations.

(vii) Bleeding or creation of a fistula resulting from tumor destruction.

(viii) Depression of blood count leading to increased risk of infection and/or bleeding.

(ix) Intermittent electric shock-like feelings in the lower spine or legs on bending the neck.

(x) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(xi) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss and scarring of skin.

(ii) Lung scarring or shrinkage causing shortness of breath.

(iii) Narrowing of esophagus causing swallowing problems.

(iv) Constriction of heart sac which may require surgical correction.

(v) Damage to heart muscle or arteries leading to heart failure.

(vi) Fracture of ribs.

(vii) Nerve damage causing pain, loss of strength or feeling in arms.

(viii) Spinal cord damage causing loss of strength or feeling in arms and legs, and/or loss of control of bladder and rectum.

(ix) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.

(III) Underdevelopment or absence of development of female breast.

(IV) Second cancers developing in the irradiated area.

(4) Breast.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, blistering, ulceration, coloration, thickening, and hair loss.

(ii) Breast changes including swelling, tightness, or tenderness.

(iii) Inflammation of the esophagus causing pain or swallowing, heartburn, or sense of obstruction.

(iv) Lung inflammation with cough.

(v) Inflammation of heart sac with chest pain and palpitations.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Breast changes including thickening, firmness, tenderness, shrinkage.

(iii) Swelling of arm.

(iv) Stiffness and discomfort in shoulder joint.

(v) Rib or lung damage causing pain, fracture, cough, shortness of breath.

(vi) Nerve damage causing pain, loss of strength or feeling in arm.

(vii) Damage to heart muscle or arteries or heart sac leading to heart failure.

(5) Abdomen.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Loss of appetite, nausea, vomiting.

(iii) Weight loss, weakness, fatigue.

(iv) Inflammation of stomach causing indigestion, heartburn, and ulcers.

(v) Inflammation of bowel causing cramping and diarrhea.

(vi) Depression of blood count leading to increased risk of infections and/or bleeding.

(vii) In children, these reactions are likely to be intensified by chemotherapy before, during and after radiation therapy.

(viii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(ii) Stomach damage causing persistent indigestion, pain, and bleeding.

(iii) Bowel damage causing narrowing or adhesions of bowel with obstruction, ulceration, or bleeding which may require surgical correction, chronic diarrhea, or poor absorption of food elements.

(iv) Kidney damage leading to kidney failure and/or high blood pressure.

(v) Liver damage leading to liver failure.

(vi) Spinal cord or nerve damage causing loss of strength or feeling in legs and/or loss of control of bladder and/or rectum.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to spine causing stunting of growth, curvature and/or reduction in height.

(III) Bone damage to pelvis causing stunting of bone growth and/or abnormal development.

(IV) Second cancers developing in the irradiated area.

(6) Female pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Disturbance of menstrual cycle.

(vi) Vaginal discharge, pain, irritation, bleeding.

(vii) Depression of blood count leading to increased risk of infection and/or bleeding.

(viii) In children, these reactions are likely to be intensified by chemotherapy before, during, or after radiation therapy.

(ix) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Ovarian damage causing infertility, sterility, or premature menopause.

(vi) Vaginal damage leading to dryness, shrinkage, pain, bleeding, or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bladder and/or bowel and/or vagina.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(7) Male pelvis.

(A) Early reactions.

(i) Inflammation of bowel causing cramping and diarrhea.

(ii) Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.

(iii) Bladder inflammation causing burning, frequency, spasm, pain, and/or bleeding.

(iv) Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.

(v) Depression of blood count leading to increased risk of infection and/or bleeding.

(vi) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(vii) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.

(ii) Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.

(iii) Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.

(iv) Bone damage leading to fractures.

(v) Testicular damage causing reduced sperm counts, infertility, sterility, or risk of birth defects.

(vi) Impotence (loss of erection) or sexual dysfunction.

(vii) Swelling of the genitalia or legs.

(viii) Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.

(ix) Fistula between the bowel and other organs.

(x) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(8) Skin.

(A) Early reactions.

(i) Redness, irritation, or soreness.

(ii) Scaliness, ulceration, crusting, oozing, discharge.

(iii) Hair loss.

(iv) These reactions are likely to be intensified by chemotherapy.

(B) Late reactions.

(i) Changes in skin texture causing scaly or shiny smooth skin, thickening with contracture, puckering, scarring of skin.

(ii) Changes in skin color.

(iii) Prominent dilated small blood vessels.

(iv) Permanent hair loss.

(v) Chronic or recurrent ulcerations.

(vi) Damage to adjacent tissues including underlying bone or cartilage.

(vii) In children, second cancers may develop in the irradiated area.

(9) Extremities.

(A) Early reactions.

(i) Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.

(ii) Inflammation of soft tissues causing tenderness, swelling, and interference with movement.

(iii) Inflammation of joints causing pain, swelling and limitation of joint motion.

(iv) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(v) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Changes in skin reaction and/or coloration, permanent hair loss and scarring of the skin.

(ii) Scarring or shrinkage of soft tissues and muscle causing loss of flexibility and movement, swelling of the limb.

(iii) Nerve damage causing loss of strength, feeling or coordination.

(iv) Bone damage causing fracture.

(v) Joint damage causing permanent stiffness, pains and arthritis.

(vi) Swelling of limb below the area treated.

(vii) In children, there may be additional late reactions.

(I) Disturbances of bone and tissue growth.

(II) Bone damage to limbs causing stunting of bone growth and/or abnormal development.

(III) Second cancers developing in the irradiated area.

(10) Total body irradiation.

(A) Early reactions.

(i) Loss of appetite, nausea, vomiting.

(ii) Diarrhea.

(iii) Reduced and sticky saliva, swelling of the salivary gland(s), loss of taste.

(iv) Hair loss.

(v) Sore mouth and throat, difficulty swallowing.

(vi) Permanent destruction of bone marrow leading to infection, bleeding, and possible death.

(vii) Inflammation of the lung with fever, dry cough and difficulty breathing with possible fatal lung failure.

(viii) Damage to liver with possible fatal liver failure.

(ix) In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.

(x) In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

(B) Late reactions.

(i) Lung scarring causing shortness of breath, infection, and fatal lung failure.

(ii) Cataract formation in the eyes, possible loss of vision.

- (iii) Testicular damage in males causing sterility.
- (iv) Ovarian damage in females causing premature menopause and sterility.
- (v) Increased risk of second cancer.

(s) Laparoscopic/Thoracoscopic surgery (including robotic surgery).

(1) Laparoscopic/Thoracoscopic risks. The following shall be in addition to risks and hazards of the same surgery when done as an open procedure.

- (A) Damage to adjacent structures.
- (B) Abscess and infectious complications.
- (C) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).
- (D) Cardiac dysfunction.
- (E) Postoperative pneumothorax.
- (F) Subcutaneous emphysema.
- (G) Conversion of the procedure to an open procedure.

(2) Use of a power morcellator in laparoscopic surgery.

(A) If cancer is present, may increase the risk of the spread of cancer.

(B) Increased risk of damage to adjacent structures.

(t) Pain management procedures.

(1) Neuroaxial procedures (injections into or around spine).

- (A) Failure to reduce pain or worsening of pain.
- (B) Nerve damage including paralysis (inability to move).
- (C) Epidural hematoma (bleeding in or around spinal canal).
- (D) Infection.
- (E) Seizure.
- (F) Persistent leak of spinal fluid which may require surgery.

(G) Breathing and/or heart problems including cardiac arrest (heart stops beating).

(H) Loss of vision.

(I) Stroke.

(2) Peripheral and visceral nerve blocks and/or ablations.

- (A) Failure to reduce pain or worsening of pain.
- (B) Bleeding.
- (C) Nerve damage including paralysis (inability to move).
- (D) Infection.
- (E) Damage to nearby organ or structure.
- (F) Seizure.

(3) Implantation of pain control devices.

(A) Failure to reduce pain or worsening of pain.

(B) Nerve damage including paralysis (inability to move).

(C) Epidural hematoma (bleeding in or around spinal canal).

(D) Infection.

(E) Persistent leak of spinal fluid which may require surgery.

(u) Dental Surgery Procedures.

(1) Oral surgery.

(A) Extraction (removing teeth).

(i) Dry socket (inflammation in the socket of a tooth).

(ii) Permanent or temporary numbness or altered sensation.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Fracture of alveolus and/or mandible (upper and/or lower jaw).

(B) Surgical exposure of tooth in order to facilitate orthodontics.

(i) Injury to tooth or to adjacent teeth and structures.

(ii) Failure to get proper attachment to tooth requiring additional procedure.

(2) Endodontics (deals with diseases of the dental pulp).

(A) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(B) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(C) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

(i) Instrument separation (tiny files which break within the tooth canal system).

(ii) Fenestration (penetration of walls of tooth into adjacent tissue).

(iii) Failure to find and/or adequately fill all canals.

(iv) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean or materials used to fill a root may go out the end of the root and cause pain or swelling).

- (v) Damage to adjacent tissues from irrigants or clamps.
- (vi) Fracture or loss of tooth.
- (3) Periodontal surgery (surgery of the gums).
 - (A) Gingivectomy and gingivoplasty (involves the removal of soft tissue).
 - (i) Tooth sensitivity to hot, cold, sweet, or acid foods.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (B) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).
 - (i) Tooth sensitivity to hot, cold, sweet, or acid foods.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (C) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement (cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Tooth sensitivity to hot, cold, sweet, or acid foods.
 - (iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (D) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (E) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (F) Osseous surgery-including flap entry and closure (modification of the bony support of the teeth).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Tooth sensitivity to hot, cold, sweet, or acid foods.
 - (iii) Loss of tooth.
 - (iv) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (G) Guided tissue regeneration-resorbable barrier.
 - (i) Permanent or temporary numbness or altered sensation.
- (ii) Accidental aspiration (into the lungs) of foreign matter.
- (iii) Rejection of donor materials.
- (H) Guided tissue regeneration-nonresorbable barrier (includes membrane removal).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (iii) Accidental aspiration (into the lungs) of foreign matter.
 - (iv) Rejection of donor materials.
- (I) Pedicle soft tissue graft procedure.
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (iii) Rejection of donor materials.
- (J) Free soft tissue graft protection-including donor site surgery.
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (iii) Rejection of graft.
- (K) Sub epithelial connective tissue graft procedures.
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
 - (iii) Rejection of graft.
- (L) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth). Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
- (M) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Tooth sensitivity to hot, cold, sweet, or acid foods.
 - (iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.
- (4) Implant procedures.
 - (A) Bone grafting (replacing missing bone).
 - (i) Permanent or temporary numbness or altered sensation.
 - (ii) Rejection of bone particles or graft from donor or recipient sites.
 - (iii) Damage to adjacent teeth or bone.

- (B) Surgical placement of implant body.
 - (i) Blood vessel or nerve injury.
 - (ii) Damage to adjacent teeth or bone fracture.
 - (iii) Sinus communication (opening from tooth socket into the sinus cavity).
 - (iv) Failure of implant requiring corrective surgery.
 - (v) Cyst formation, bone loss, or gum disease around the implant.
- (v) Plastic surgery and surgery of the integumentary system.
- (1) Augmentation mammoplasty (breast enlargement with implant).
 - (A) Bleeding around implant.
 - (B) Sensory changes or loss of nipple sensitivity.
 - (C) Failure, deflation, or leaking of implant requiring replacement.
 - (D) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
 - (E) Problems with or the inability to breastfeed.
 - (F) Capsular contracture (hardening of breast).
- (2) Bilateral breast reduction.
 - (A) Skin flap or fat necrosis (injury or death of skin and fat).
 - (B) Loss of nipple or areola.
 - (C) Sensory changes or loss of nipple sensitivity.
 - (D) Problems with or the inability to breastfeed.
 - (E) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape or not desired size).
- (3) Rhinoplasty or nasal reconstruction with or without septoplasty (repairing the middle wall of the nose).
 - (A) Development of new problems, such as perforation of the nasal septum (hole in wall between the right and left halves of the nose) or breathing difficulty.
 - (B) Spinal fluid leak.
 - (C) Worsening or unsatisfactory appearance.
- (4) Reconstruction and/or plastic surgery operations of the face and neck.
 - (A) Impairment of regional organs, such as eye or lip function.
 - (B) Recurrence of the original condition.
 - (C) Worsening or unsatisfactory appearance.
- (5) Liposuction (removal of fat by suction).
 - (A) Shock.
 - (B) Pulmonary fat embolism (fat escaping with possible damage to vital organs).
 - (C) Damage to skin with possible skin loss.
 - (D) Loose skin.
 - (E) Worsening or unsatisfactory appearance.
- (6) Breast reconstruction with other flaps and/or implants.
 - (A) Bleeding around implant.
 - (B) Sensory changes or loss of nipple sensitivity.
 - (C) Failure, deflation, or leaking of implant requiring replacement.
 - (D) Damage to internal organs.
 - (E) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
- (7) Nipple Areolar Reconstruction.
 - (A) Loss of graft.
 - (B) Unsatisfactory appearance.
- (8) Panniculectomy (removal of skin and fat).
 - (A) Persistent swelling in the legs.
 - (B) Nerve damage.
 - (C) Worsening or unsatisfactory appearance.
- (9) Tendonitis, tendon release, and trigger releases.
 - (A) Recurrence of symptoms.
 - (B) Damage to blood vessels, nerves, tendons, or muscles.
 - (C) Worsening function.
- (10) Breast reconstruction with flaps.
 - (A) Damage to blood vessels, nerves, or muscles.
 - (B) Loss of flap possibly requiring additional surgery.
 - (C) Damage to internal organs.
 - (D) Increased risk of abdominal wall complications with pregnancy.
 - (E) Abdominal hernias with abdominal flaps.
 - (F) Chronic abdominal pain with abdominal flaps.
 - (G) Worsening or unsatisfactory appearance including asymmetry (unequal size or shape).
- (11) Flap or graft surgery.
 - (A) Damage to blood vessels, nerves, or muscles.
 - (B) Deep vein thrombosis (blood clot in legs or arms).
 - (C) Loss of flap possibly requiring additional surgery.
 - (D) Worsening or unsatisfactory appearance.
- (12) Tendons, nerves, or blood vessel repair.
 - (A) Damage to nerves.
 - (B) Deep vein thrombosis (blood clot in legs or arms).
 - (C) Rupture of repair.
 - (D) Worsening of function.
- (13) Reconstructive and/or plastic surgical procedures of the eye and eye region, such as blepharoplasty, tumor, fracture, lacrimal surgery, foreign body, abscess, or trauma. See subsection (f)(4) of this section (relating to eye treatments and procedures).

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

Filed with the Office of the Secretary of State on October 21, 2021.

TRD-202104245

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Effective date: November 10, 2021

Proposal publication date: April 23, 2021

For further information, please call: (512) 438-2889



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 261. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

SUBCHAPTER C. PROVIDER ADMINISTRATIVE REQUIREMENTS

26 TAC §261.220

The Texas Health and Human Services Commission (HHSC) adopts new §261.220, concerning Medicaid Bed Reallocation, in Title 26, Texas Administrative Code (TAC), Chapter 261, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program Contracting.

Section 261.220 is adopted with changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4436). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to implement House Bill (H.B.) 3117, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code §533A.062(b-1) and requires HHSC to develop a process to reallocate community ICF/IID beds.

The new section explains how a person applies for and HHSC reallocates beds that revert to the control of HHSC due to facility closure, with or without a period of suspension under 26 TAC §261.218. The adopted rule allows a person to request up to six beds per facility.

COMMENTS

The 31-day comment period ended August 23, 2021. During this period, HHSC received comments regarding the proposed rule from Caregiver, an ICF/IID provider. A summary of the comments and HHSC's responses follow.

Comment: The commenter stated that medium and large ICF/IID facilities should have the first opportunity to apply for reallocated

beds to address the issue of cost neutrality when seeking to downsize.

Response: HHSC disagrees with the comment and declines to revise the rule. "Downsizing" refers to redistributing a program provider's capacity from a medium or large facility and using the capacity for small facilities. Redistribution addressed in 26 TAC §261.214(d) is different from reallocation, which is addressed in new §261.220. Redistribution is based on a request and plan from a program provider. The request and plan must be approved by HHSC and HHSC may require the redistribution to be cost neutral. The rates paid to small and medium facilities are higher than those paid to large facilities, so if HHSC requires cost neutrality there will be a reduction in the capacity of the ICF/IID program and those forfeited beds are not available to be reallocated. If a program provider wants to apply for reallocated beds in accordance with new §261.220 and incorporate those beds into a plan to redistribute capacity, that is not prohibited. However, the requests to redistribute capacity and the requests for reallocated beds are independent and HHSC declines to give a program provider that wants to use reallocated beds as part of a redistribution plan preference over other persons who apply for reallocated beds.

Comment: The commenter requested that the limit of six reallocated beds per facility be waived for medium and large ICF/IID facilities seeking to downsize or voluntarily close.

Response: HHSC disagrees with the comment and declines to revise the rule. If a program provider requests to redistribute capacity from a medium or large facility, HHSC will approve a redistribution plan only if the new or downsized facilities resulting from the plan do not exceed a capacity of six. A program provider may submit more than one request for reallocated beds and, as stated in response to the previous comment, a program provider may request reallocated beds in addition to a plan to redistribute capacity. However, resulting facilities may not exceed a capacity of six.

Comment: The commenter requested that program providers that want to redistribute capacity from medium and large facilities be exempt from having to provide documentation of demonstrated need for reallocated beds.

Response: HHSC disagrees with the comment and declines to revise the rule. The demonstration of need is a critical part of the reallocation process. HHSC wants the beds to be used in an area where there is a need for them. Medium and large providers that request to redistribute the capacity of their facilities and also want to use reallocated beds should be able to demonstrate a need for the beds in accordance with the rule.

HHSC made revisions on adoption that were not in response to public comment. HHSC revised subsection (b) to clarify that 26 TAC §551.14, which requires HHSC approval to increase licensed capacity, applies to licensed facilities. The certified capacity of a facility, governed by 26 TAC §261.214, states that HHSC determines the certified capacity of a facility. In rule, there is a process for a program provider to request that the certified capacity of a facility be decreased and redistributed, but not increased.

HHSC added new §261.220(c) to provide a definition of "applicant" for new §261.220 because the meaning of the term in the new section is different from the definition in §261.203(5), which applies to Chapter 261 generally. Section 261.220(c) clarifies that an applicant for reallocated beds may be a person who is not a program provider, a program provider operating a licensed

facility, or a program provider operating a facility that is exempt from licensure in accordance with Texas Health and Safety Code §252.003. The remaining subsections have been renumbered.

HHSC revised new §261.220(e) to delete the reference to a current or new provider. That reference is not necessary with the definition of "applicant" provided in §261.220(c). HHSC revised §261.220(e)(1) to clarify that a request for reallocated beds may not exceed six beds per facility.

HHSC revised new §261.220(l), (m), and (n) so the rule does not characterize the application in the Texas Unified Licensure Information Portal (TULIP) as a "licensure" application because it serves as an application for both an ICF/IID license and certification. Some program providers are exempt from ICF/IID licensure and would use the application to obtain certification only. In addition, HHSC revised the rule to specify an "initial" application because that is the type of license that must be submitted through TULIP.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §252.008 and §252.036, which, respectively, require the Executive Commissioner of HHSC to adopt rules related to the administration and implementation of Chapter 252 and to adopt minimum standards relating to facilities licensed under Chapter 252.

§261.220. Medicaid Bed Reallocation.

(a) Based on Texas Health and Safety Code §533A.062(b-1) (relating to Plan on Long-Term Care for Persons with an Intellectual Disability), and as authorized by the Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions, the Texas Health and Human Services Commission (HHSC) must:

(1) review the state-wide bed capacity of community intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID); and

(2) develop a process to reallocate beds held in suspension by HHSC.

(b) As provided in §551.14 of this title (relating to Increase in Capacity), a facility may not increase its capacity without approval from HHSC.

(c) For purposes of this section only, "applicant" means a person who requests reallocated Medicaid beds in accordance with this section. An applicant may be a person:

- (1) who is not a program provider;
- (2) who is a program provider operating a licensed facility;

or

(3) who is a program provider operating a facility that is exempt from licensure in accordance with Texas Health and Safety Code §252.003 (relating to Exemptions).

(d) Notwithstanding §261.206 of this chapter (relating to Application Process), the following provisions establish the process for HHSC Long-term Care Regulation to reallocate ICF/IID Medicaid beds.

(e) If an applicant wants to request reallocated Medicaid beds, the applicant:

(1) can request no more than six reallocated beds for each facility;

(2) interested in obtaining reallocated beds must:

(A) complete form HHSC 3642, ICF/IID Medicaid Bed Reallocation Application; and

(B) email the application and all supporting documentation to: Medicaid_Bed_Allocation@hhs.texas.gov.

(f) For the reallocation, HHSC calculates the number of available beds based on the numbers of surrendered or expired beds made available during the relevant state fiscal years.

(g) When HHSC receives a complete application for reallocation, HHSC:

(1) processes the application in the order received;

(2) reviews the application to determine if the applicant meets the criteria for reallocation;

(3) determines if ICF/IID beds are available for reallocation;

(4) verifies the applicant is immediately ready to use the beds;

(5) determines if the applicant demonstrates a need for the beds as described in subsection (g) of this section; and

(6) if the applicant is a current program provider, determines whether the applicant has an acceptable regulatory compliance history with HHSC.

(h) The applicant must provide documentation that demonstrates the need for the requested reallocated beds by providing:

(1) data demonstrating occupancy rates of 80 percent or greater for nine of the 12 months preceding the application if the applicant is a current program provider;

(2) documentation of a wait list, such as letters from individuals or family members attesting that they want to receive services from the applicant; or

(3) any other documentation showing a need for a new ICF/IID.

(i) HHSC considers the regulatory compliance history for any facility operated by the applicant. An acceptable regulatory compliance history means that, in the preceding 24 months, the applicant and controlling persons have not received any of the following sanctions:

(1) termination of Medicaid or Medicare certification;

(2) termination of Medicaid contract;

(3) denial, suspension or revocation of a provider license;

(4) cumulative Medicaid or Medicare civil monetary penalties totaling more than \$5,000 in a single facility;

(5) imposition of civil penalties pursuant to Texas Health and Safety Code §252.064;

(6) denial of payment for new admissions;

(7) a pattern of substantial or repeated licensing or Medicaid sanctions, including administrative penalties; or

(8) a condition listed in §551.17 of this title (relating to Criteria for Denying a License or Renewal of a License).

(j) An applicant having no compliance history to consider must meet all other criteria for reallocation.

(k) If an applicant meets all criteria for reallocation and ICF/IID beds are available, HHSC approves the application, grants the number of beds requested, up to a maximum of six beds, and sends an approval letter to the applicant.

(l) On approval of the reallocation, the applicant must submit an initial application in the Texas Unified Licensure Information Portal within 30 days from the date of the approval letter. The applicant must also complete the provider enrollment and Medicaid contracting process as referenced in §261.206 of this chapter and §261.208 of this chapter (relating to Provider Agreement).

(m) If the applicant fails to complete and submit the initial application, the reallocation application is cancelled, and HHSC will re-allocate the beds to another approved applicant or hold the beds until another provider is approved.

(n) If HHSC denies the initial application or the applicant does not complete the provider enrollment or Medicaid contracting process, HHSC reallocates the beds to another approved applicant or holds the beds until approval of another applicant.

(o) If HHSC revokes the reallocation of beds, HHSC notifies the person to whom the beds were allocated. The person may not appeal the revocation of capacity.

(p) Once HHSC reallocates all available beds, HHSC will place any approved applicants who did not receive reallocated beds on a waiting list. As additional beds become available for reallocation, HHSC will contact approved applicants on the wait list.

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 October 19, 2021.

TRD-202104209

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Chief Counsel

Health and Human Services Commission

Effective date: November 8, 2021

Proposal publication date: July 23, 2021

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



CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM SUBCHAPTER X. DISASTER RULE FLEXIBILITIES FOR BEHAVIORAL HEALTH PROVIDERS

26 TAC §306.1251

The Texas Health and Human Services Commission (HHSC) adopts new §306.1251, concerning Disaster Flexibilities. Section 306.1251 is adopted with changes to the proposed text as published in the July 30, 2021, issue of the *Texas Register* (46 TexReg 4542). This rule will be republished.

BACKGROUND AND JUSTIFICATION

HHSC adopts rules to establish requirements and flexibilities to protect public health and safety during a disaster declared by the Governor. The requirements established in these rules are

effective in all Texas counties or in a particular Texas county or counties during an active state of disaster as declared pursuant to Texas Government Code §418.014. The new section allows HHSC the flexibility to waive certain requirements for the delivery of services in response to a declared disaster. The new section is based on the existing emergency rule adopted in Texas Administrative Code Title 26, Part 1, Chapter 306, Subchapter Z, §306.1351, relating to COVID-19 Flexibilities. Adoption of new §306.1251 is necessary to allow providers subject to the rule to operate with the same flexibilities afforded by the emergency rule, and it ensures continuity of services for individuals receiving community-based behavioral health services.

COMMENTS

The 31-day comment period ended August 30, 2021.

During this period, HHSC received comments regarding the proposed rule from one commenter, the Texas Medical Association. A summary of comments relating to the rule and HHSC's responses follows.

Comment: The commenter recommended adding a new subsection to clarify the meaning of the terms telehealth and telemedicine and recommended the terms having the same meaning as §111.001(3) and (4) of the Texas Occupations Code respectively.

Response: HHSC agrees and added the terms as recommended under §306.1251(b) to include a cross reference to §111.001 of the Texas Occupations Code (relating to Definitions). HHSC renumbered subsections §306.1251(b), (c), and (d) as new subsections (c), (d), and (e), respectively.

Comment: The commenter recommended clarifying the situations in which the flexibilities are available in proposed §306.1251(b).

Response: HHSC agrees and revised new §306.1251(c) as recommended.

Comment: The commenter recommended modifying proposed §306.1251(b)(1) and (b)(1)(A) to clarify that a provider's ability to use the alternative interaction methods is limited by the provider's scope of licensure or other legal authorization.

Response: HHSC agrees and revised new §306.1251(c)(1) and (c)(1)(A) as recommended.

Comment: The commenter recommended clarifying the flexibilities available for certain in-person staff training or staff training in a specific location as to what flexibilities extends to the rules listed in proposed §306.1251(b)(3), §306.1251(b)(3)(A), and §306.1251(b)(3)(B).

Response: HHSC agrees and revised new §306.1251(c)(1)(B) and §306.1251(c)(3).

HHSC made minor editorial changes to the section which include, punctuation, updating cross references in §306.1251(a), §306.1251(d), and §306.1251(d)(2), and revising language in §306.1251(c)(4) for clarity.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §§531.0055, 533.014, 533.035, 533.0356, 534.052, 534.058, 572.0025, 571.006, and 577.010. §531.0055 provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §533.014

requires the Executive Commissioner of HHSC to adopt rules regarding certain responsibilities for LMHAs; §533.035 authorizes HHSC to contract with LMHAs for the delivery of mental health services; §533.0356 allows the Executive Commissioner of HHSC to adopt rules governing Local Behavioral Health Authorities (LBHAs); §534.052 authorizes the Executive Commissioner of HHSC to adopt rules to ensure the adequate provision of community-based mental health services; §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractor; §572.0025 authorizes the Executive Commissioner of HHSC to adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; §571.006 authorizes the Executive Commissioner to adopt rules to ensure the proper and efficient treatment of persons with mental illness; and §577.010 authorizes the Executive Commissioner to adopt rules to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

§306.1251. Disaster Flexibilities.

(a) In the event of a state of disaster declared pursuant to Texas Government Code §418.014 for statewide disasters or limited areas subject to the declaration, the flexibilities listed under subsection (c) of this section will be available until the state of disaster is terminated.

(b) Telehealth and telemedicine have the same meaning as the terms telehealth services and telemedicine medical services defined in §111.001 of the Texas Occupations Code (relating to Definitions).

(c) The following flexibilities are available to community behavioral health providers to the extent such providers are providing services under Title 25, Part 1 or Title 26, Part 1 of the Texas Administrative Code (TAC) and to the extent the flexibilities do not conflict with federal or state laws, regulations, rules, or orders.

(1) For rules under Title 25, Part 1 and Title 26, Part 1 of the TAC that require a community behavioral health provider to deliver certain services:

(A) through face-to-face or in-person contact, such as the following rules, the provider may use telehealth, telemedicine, video-conferencing, or telephonic methods to engage with the individual to provide these services, to the extent such use is permitted within the scope of the provider's state license, permit, or other legal authorization:

- (i) §301.327 of this title (relating to Access to Mental Health Community Services);
- (ii) §301.351 of this title (relating to Crisis Services);
- (iii) §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization);
- (iv) §301.357 of this title (relating to Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents);
- (v) §301.359 of this title (relating to Telemedicine Services);
- (vi) §306.207 of this chapter (relating to Post Discharge or Absence for Trial Placement: Contact and Implementation of the Recovery or Treatment Plan);
- (vii) §306.263 of this chapter (relating to MH Case Management Services Standards);
- (viii) §306.275 of this chapter (relating to Documenting MH Case Management Services);

- (ix) §306.277 of this chapter (relating to Medicaid Reimbursement);
- (x) §306.305 of this chapter (relating to Definitions);
- (xi) §306.323 of this chapter (relating to Documentation Requirements);
- (xii) §306.327 of this chapter (relating to Medicaid Reimbursement);
- (xiii) §307.53 of this title (relating to Eligibility Criteria and HCBS-AMH Assessment);
- (xiv) 25 TAC §415.10 (relating to Medication Monitoring); and
- (xv) 25 TAC §415.261 (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency); or

(B) in a specific physical space or on site, such as 25 TAC §414.554 (relating to Responsibilities of Local Authorities, Community Centers, and Contractors), the provider may deliver the service using virtual platforms, such as telephone or videoconferencing.

(2) Section 307.5 of this title (relating to Eligibility Criteria) that require a child or adolescent participating in the Youth Empowerment Services (YES) Waiver Program to reside with their legally authorized representative to receive services may reside with another responsible adult. Providers must ensure the alternate residency complies with any applicable requirements related to participation in the YES Waiver Program. The flexibility allowed under this subsection IS NOT IN EFFECT unless and until the Centers for Medicare & Medicaid Services approves HHSC's request for activation of Appendix-K.

(3) For rules under Title 25, Part 1 and Title 26, Part 1 of the TAC that require staff training through face-to-face or in-person contact or in a specific physical space or on site, staff training may be done on virtual platforms.

(4) For rules under Title 25, Part 1 and Title 26, Part 1 of the TAC where HHSC may issue guidance to extend timeframe flexibilities:

(A) the extended timeframe may not be longer than 120 days for compliance with staff training requirements based on training availability and feasibility during, or resulting from, a declared disaster; and

(B) an individual's or staff member's health or safety shall not be compromised by the flexibilities for training requirements provided in:

- (i) §306.83 of this chapter (relating to Staff Training); and
- (ii) §301.331 of this title (relating to Competency and Credentialing).

(d) Providers that avail themselves of the flexibilities allowed under subsection (c) of this section, must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in subsection (c) of this section issued by the Texas Health and Human Service Commission Medicaid Services Department.

(e) Providers must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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 October 20, 2021.

TRD-202104216

Karen Ray
Chief Counsel

Health and Human Services Commission

Effective date: November 15, 2021

Proposal publication date: July 30, 2021

For further information, please call: (512) 468-1729



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 732. CONTRACTED SERVICES

SUBCHAPTER B. ENHANCED CONTRACT MONITORING

40 TAC §732.201

The Department of Family and Protective Services (DFPS), adopts new §732.201 in Title 40, Texas Administrative Code (TAC), Chapter 732, relating to Contracted Services, new Subchapter B, Enhanced Contract Monitoring. The rule is adopted without changes to the proposed text published in the August 6, 2021, issue of the *Texas Register* (46 TexReg 4839). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The justification of this rulemaking, as provided for in Texas Government Code (TGC) §2261.253(c), is that each state agency is

required to establish and publish a procedure to identify contracts that require enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or officer who governs the agency. DFPS has implemented the requirements in TGC §2261.253(c) and has published enhanced contracting monitoring requirements in its Contract Handbook; however, this rule is required to be published in the Texas Administrative Code.

COMMENTS

The 30-day comment period ended September 5, 2021. During this period, DFPS did not receive any comments regarding the new rule.

STATUTORY AUTHORITY

The new section is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS Commissioner shall adopt rules for the operation and provision of services by the agency.

The adopted new section implements Texas Government Code §2261.253.

No other statutes, articles, or codes are affected by the adopted rule.

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

Filed with the Office of the Secretary of State on October 19, 2021.

TRD-202104196

Vicki Kozikoujeklan
General Counsel

Department of Family and Protective Services

Effective date: November 8, 2021

Proposal publication date: August 6, 2021

For further information, please call: (512) 438-3083





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 State Health 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, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 61, Chronic Diseases, Subchapter C, Breast and Cervical Cancer Services, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 371, Breast and Cervical Cancer Services.

The rules will be transferred in the Texas Administrative Code effective December 1, 2021.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 61, Subchapter C
TRD-202104253

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, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 61, Chronic Diseases, Subchapter C, Breast and Cervical Cancer Services, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 371, Breast and Cervical Cancer Services.

The rules will be transferred in the Texas Administrative Code effective December 1, 2021.

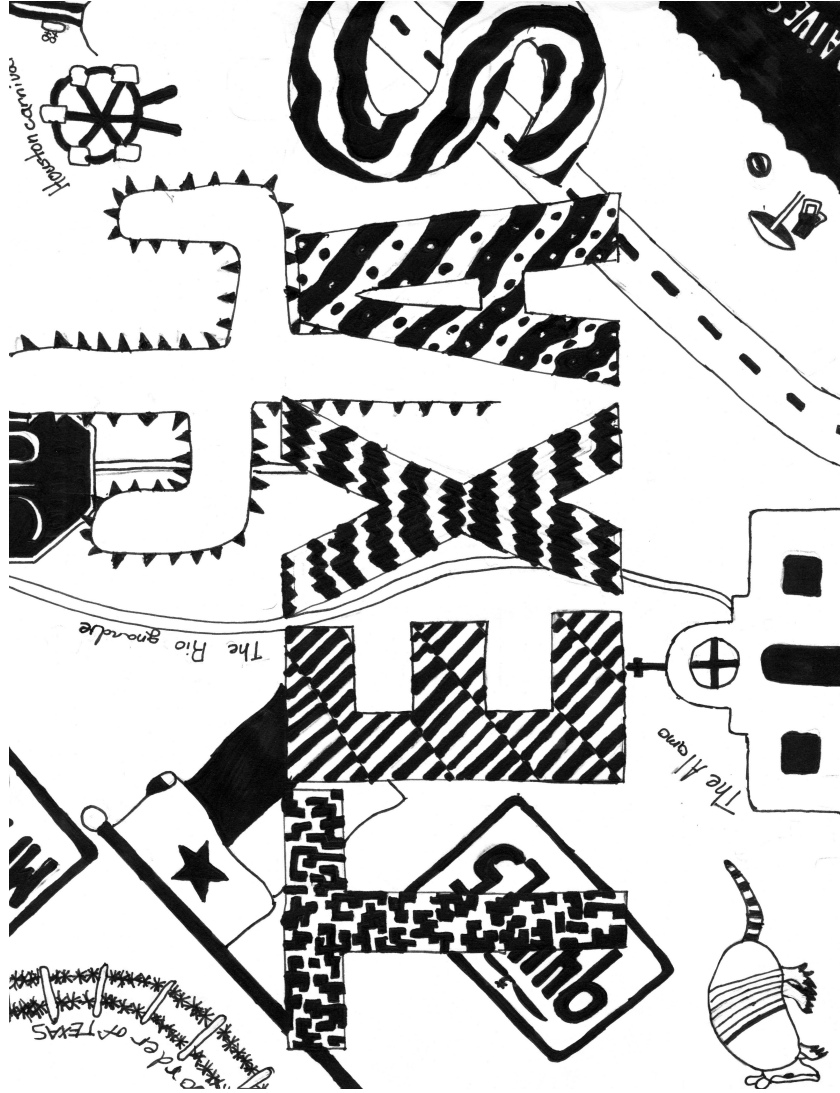
The following table outlines the rule transfer:

Figure: 25 TAC Chapter 61, Subchapter C
TRD-202104254

Figure: 25 TAC Chapter 61, Subchapter C

Current Rules	Move to
Title 25. Health Services	Title 26. Health and Human Services
Part 1. Department of State Health Services	Part 1. Texas Health and Human Services Commission
Chapter 61. Chronic Diseases	Chapter 371. Breast and Cervical Cancer Services
Subchapter C. Breast and Cervical Cancer Services	
§61.31. Purpose.	§371.1. Purpose.
§61.32. Federal Authorization and Requirements.	§371.3. Federal Authorization and Requirements.
§61.33. Providers.	§371.5. Providers.
§61.34. Client Eligibility Requirements.	§371.7. Client Eligibility Requirements.
§61.37. Screening Requirements.	§371.9. Screening Requirements.
§61.39. Follow-up and Case Management Requirements.	§371.11. Follow-up and Case Management Requirements.
§61.41. Payment for Services.	§371.13. Payment for Services.
§61.42. Client Fees.	§371.15. Client Fees.





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Law Enforcement

Title 37, Part 7

The Texas Commission on Law Enforcement (TCOLE) submits this rule review plan in accordance with Government Code §2001.039.

For administrative continuity and public convenience, TCOLE shall, when practicable, review all rules within a chapter during the chapter's assigned review period regardless of varying effective dates within the chapter.

Actions to amend, repeal, or adopt rules may begin independently of this schedule if required by legislative action, court decision, or other causes. TCOLE reserves the right to review a chapter as part of its routine rulemaking before or after its scheduled review date when deemed appropriate.

Fiscal Year 2022, September 2021

Chapter 211 Administration

Chapter 215 Training and Educational Providers and Related Matters

Chapter 217 Enrollment, Licensing, Appointment, and Separation

Chapter 218 Continuing Education

Chapter 219 Prelicensing and Reactivation Courses, Tests, and Endorsements

Chapter 221 Proficiency Certificates

Chapter 223 Enforcement

Chapter 225 Specialized Licenses

Chapter 227 School Marshals

Chapter 229 Texas Peace Officers' Memorial

Fiscal Year 2024, September 2023

Chapters 211-29

Fiscal Year 2026, September 2025

Chapters 211-29

Fiscal Year 2028, September 2027

Chapters 211-29

Written comments may be submitted electronically to public.comment@tcole.texas.gov or to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. 290 East, Austin, Texas 78723.

TRD-202104241

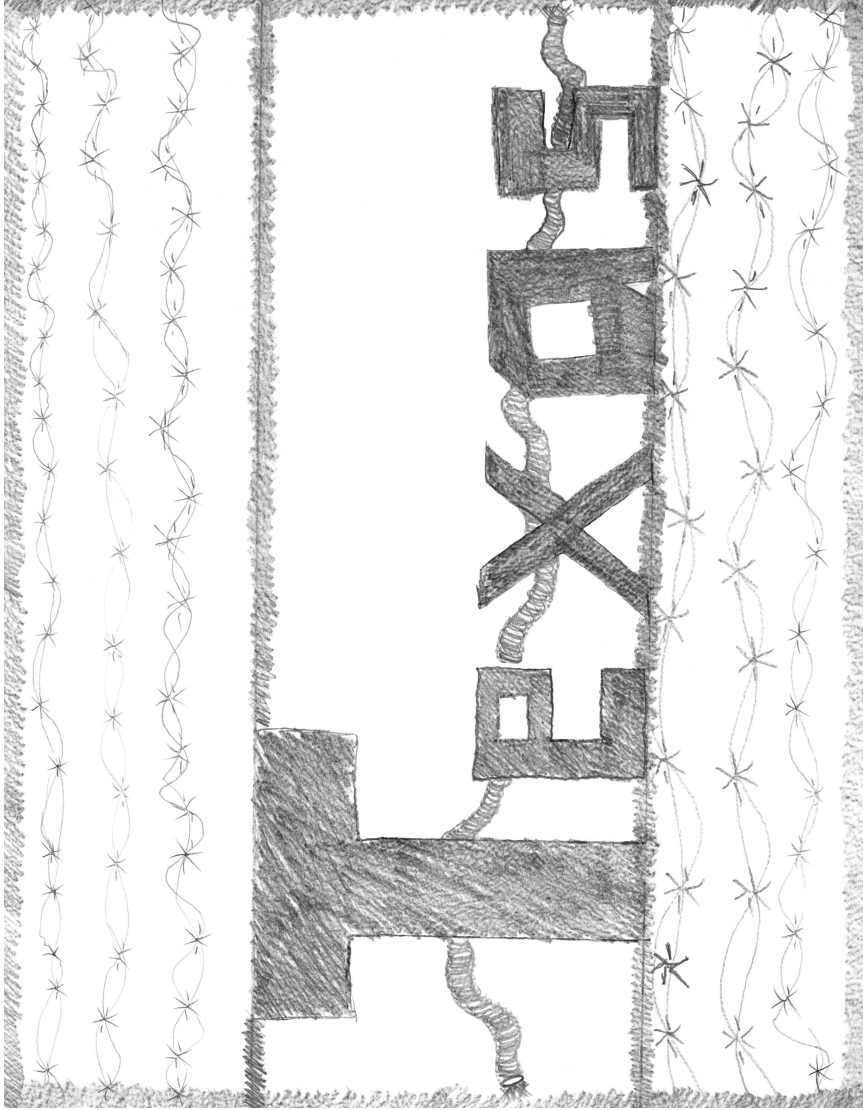
Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Filed: October 20, 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.

Texas State Affordable Housing Corporation

Draft Bond Program Policies and Request for Proposals Available for Public Comment

The Texas State Affordable Housing Corporation ("Corporation") has posted for public comment the draft of its 2022 Tax-Exempt Bond Program Policies and Request for Proposals (RFP). A copy of the draft policies and request for proposals is available on the Corporation's website at <https://www.tsahc.org/developers/tax-exempt-bonds>.

All public comment or questions about the Draft Policies and RFP may be submitted via email to ddanenfelzer@tsahc.org. The Corporation will include written public comments received before December 8, 2021, in its final recommendations to the Board of Directors at the December Board Meeting.

Comments will also be accepted by USPS at the offices of the Corporation sent to:

Texas State Affordable Housing Corporation

Attn: Development Finance Programs

6701 Shirley Avenue

Austin, Texas 78752

TRD-202104237

David Long

President

Texas State Affordable Housing Corporation

Filed: October 20, 2021

Ark-Tex Council of Governments

Invitation to Bid - Interior Remodel

Competitive Sealed Proposals for phase 1 remodel of the Ark-Tex Council of the Governments located in the City of Texarkana, Texas 75503, will be received at the Ark-Tex Council of the Governments Office: 4808 Elizabeth St, Texarkana, Texas 75503 ATTN: Mary Beth Rudel until November 09, 2021, at 2:00 p.m. Bids will be opened and read aloud via a Zoom Conference on November 09, 2021, at 3:00 p.m. The Architect's office will provide a link to the conference based off the bidders list on November 09, 2021, at 9:00 a.m. Please check your junk mail folder if you do not see it in your inbox.

The work to be executed as herein described and shown on the drawings entitled An Interior Remodel for Ark-Tex Council of Governments in the city of Texarkana, Texas 75503. New construction consists of the furnishing of all materials, labor, equipment, and services necessary or reasonably incidental to complete the construction of the aforementioned project on a site shown and described on the drawings.

The general construction consists of new construction of a 3,357 sq. ft. remodel. Construction consists generally of interior demolition, rough carpentry, millwork, batt insulation, interior finishes, drywall, acoustical ceiling, doors & frames, hardware, painting, bath accessories, interior signage, mechanical, plumbing, electrical.

Plans, specifications, proposal forms, and other contract documents may be obtained from the Architect, via email request to branson@level5arch.com.

This is a General Contractor project where all work will be performed under the General Contractor contract. All questions concerning the project details shall be directed to Branson Evans at branson@level5arch.com -or- (479) 279-8400. The deadline for submitting questions is November 01, 2021, at 5:00 p.m. and none will be accepted after the date. No addendums will be issued in the final week of bidding.

No bidder may withdraw his/her bid for a period of thirty (30) days following the opening of bids. The Owner reserves the right to reject any and/or all bids or portions thereof and to waive all formalities therewith.

TRD-202104305

Mary Beth Rudel

Deputy Director

Ark-Tex Council of Governments

Filed: October 25, 2021

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - September 2021

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period September 2021 is \$48.67 per barrel for the three-month period beginning on June 1, 2021, and ending August 31, 2021. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of September 2021, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period September 2021 is \$2.45 per mcf for the three-month period beginning on June 1, 2021, and ending August 31, 2021. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2021, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of September 2021 is \$71.54 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of September 2021, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code,

§171.1011(s), that the average closing price of gas for the month of September 2021 is \$5.12 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from gas produced during the month of September 2021, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-202104318
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: October 27, 2021

◆ ◆ ◆
Concho County Commissioner's Court

Rural Nursing Home Bed Waiver Request

The Concho County Commissioner's Court is requesting a rural nursing home bed waiver for a 45-bed nursing facility in Eden, Texas. The following comments and proposals will be reviewed at the commissioners' court December 07, 2021, at the Concho County Courthouse located at 152 N Roberts Ave, Paint Rock, Texas 76866. The Commissioner's Court will convene at 10:00 a.m. Comments and proposals can be sent prior to the meeting to Judge David Dillard, at the Concho County Courthouse located at 152 N Roberts Ave, Paint Rock, Texas 76866 or presented in person at the commissioner's court meeting on December 07, 2021, 10:00 a.m. at the Concho County Courthouse located at 152 N Roberts Ave, Paint Rock, Texas 76866.

- i. comments on whether a new Medicaid nursing facility should be requested; and
- ii. proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates.

HHSC, in its sole discretion, may eliminate from participating in the process persons or entities that submit false or fraudulent information.

TRD-202104317
David Dillard
County Judge
Concho County Commissioner's Court
Filed: October 27, 2021

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/01/21 - 11/07/21 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 11/01/21 - 11/07/21 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-202104316
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 26, 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 **December 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 **December 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: AB Mini Mart, Incorporated dba A B Food & Gas; DOCKET NUMBER: 2021-0793-PST-E; IDENTIFIER: RN102984333; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tanks (USTs) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and (2) 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: \$4,775; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2021-0720-PWS-E; IDENTIFIER: RN110387883; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(i)(2), by failing to obtain approval from the executive director for the equipment used to haul water when drinking water is distributed by tank truck or trailer; and

30 TAC §290.44(i)(2)(L), by failing to maintain operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water; PENALTY: \$1,102; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2021-0719-PWS-E; IDENTIFIER: RN110286077; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(i)(2), by failing to obtain approval from the executive director for the equipment used to haul water when drinking water is distributed by tank truck or trailer; and 30 TAC §290.44(i)(2)(L), by failing to maintain operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water; PENALTY: \$1,102; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Billy Gouddie; DOCKET NUMBER: 2021-0990-PST-E; IDENTIFIER: RN101490548; LOCATION: Austin, Williamson County; TYPE OF FACILITY: temporarily out-of-service; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and §334.54(b)(3) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator Class A, Class B, and Class C, for the facility; PENALTY: \$5,905; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: City of Beaumont; DOCKET NUMBER: 2021-0039-MWD-E; IDENTIFIER: RN101612224; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: wastewater treatment plant with an associated collection system; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010501020, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: \$11,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,250; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2021-0776-MWD-E; IDENTIFIER: RN104798681; LOCATION: Caddo Mills, Hunt 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 WQ0010425002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Hackberry; DOCKET NUMBER: 2021-0469-PWS-E; IDENTIFIER: RN101232015; LOCATION: Frisco, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425;

REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Henderson; DOCKET NUMBER: 2020-0397-MWD-E; IDENTIFIER: RN101612179; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010187001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$23,437; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,750; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of San Augustine; DOCKET NUMBER: 2020-0818-MLM-E; IDENTIFIER: RN103779302; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(m) and §290.43(e), by failing to provide an intruder-resistant fence or well house around each treatment plant, well unit, potable water treatment plant, pressure maintenance facility and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.43(c)(3), by failing to ensure the discharge opening of the overflows were above the surface of the ground and were not subject to submergence; 30 TAC §290.46(f)(2) and (3)(D)(ii) and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 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; and TWC, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from the surface water treatment plant filters; PENALTY: \$16,302; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$16,302; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Cityview Carwash LLC dba Cityview Car Wash & Oil Change; DOCKET NUMBER: 2021-0954-PST-E; IDENTIFIER: RN101556272; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: car wash with retail sales of fuel; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: FIGURE FOUR PARTNERS, LTD.; DOCKET NUMBER: 2019-1405-WQ-E; IDENTIFIER: RN110463163; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and terminated Texas Pollutant Discharge Elimination System General Permit Number TXR15387Q, Part III, Sections G.1 and G.4, by failing to design, install, and maintain effective best management practices to minimize the discharge of pollutants; PENALTY: \$15,183; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: GDEC Investments, LLC; DOCKET NUMBER: 2021-1367-WQ-E; IDENTIFIER: RN111290052; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(13) COMPANY: Heid Construction LLC; DOCKET NUMBER: 2021-1373-WQ-E; IDENTIFIER: RN111317871; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2020-1431-AIR-E; IDENTIFIER: RN107305922; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§115.722(c)(1), 116.115(c), and 122.143(4), New Source Review Permit Number 4445, Special Conditions Number 1, Federal Operating Permit Number O1911, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds or less per one-hour block period; PENALTY: \$8,775; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,387; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Martinez, Pete; DOCKET NUMBER: 2021-1369-WOC-E; IDENTIFIER: RN111314563; LOCATION: Christine, Atascosa County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Mateo's Store & Gas, LLC dba H Express; DOCKET NUMBER: 2021-0880-PST-E; IDENTIFIER: RN110067410; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: \$15,776; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: MURVAUL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2021-0538-PWS-E; IDENTIFIER: RN101458214; LOCATION: Panola, Panola County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from the facility's one entry point no later than 180 days after the end of the January 1, 2020 - June 30, 2020, monitoring period during which the copper action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2020 - June 30, 2020, monitoring period, during which the copper action level was exceeded; and 30 TAC

§290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2020 - June 30, 2020, monitoring period, during which the copper action level was exceeded; PENALTY: \$2,147; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 849-4968; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2021-0982-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 6825A, PSDTX49M2, N65, and GHGPSDTX167M1, Special Conditions Number 1, Federal Operating Permit Number O1498, 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: \$12,500; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Wildwood Estates of Lubbock, LLC; DOCKET NUMBER: 2021-0704-PWS-E; IDENTIFIER: RN101193357; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(F)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and/or associated late fees for TCEQ Financial Administration Account Number 91520046 for Fiscal Years 2015 through 2021; PENALTY: \$387; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(20) COMPANY: Wills Investments Texas, LLC dba Texaco Popeyes; DOCKET NUMBER: 2021-0603-PST-E; IDENTIFIER: RN101553675; LOCATION: Frisco, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; and 30 TAC §334.605(d), by failing to re-train a certified Class A and Class B operator by January 1, 2020, with a course submitted to and approved by the TCEQ after April 1, 2018; PENALTY: \$4,050; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202104307

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 26, 2021



Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater: New Permit No. WQ0016003001

APPLICATION AND PRELIMINARY DECISION. Restore the Grasslands LLC and Harrington/Turner Enterprises, LP, 4801 West Lovers Lane, Dallas, Texas 75209, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016003001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. TCEQ received this application on May 26, 2021.

The facility will be located approximately 0.4 miles northwest from the intersection of North Murphy Road and Rolling Ridge Drive, in Collin County, Texas 75002. The treated effluent will be discharged to Maxwell Creek, thence to Muddy Creek, thence to Lake Ray Hubbard in Segment No. 0820 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for Maxwell Creek. The designated uses for Segment No. 0820 are primary contact recreation, public water supply, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.616388%2C33.041666&level=12>

In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), 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. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 antidegradation review is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Rita & Truett Smith Public Library, 300 Country Club Road, #300, Wylie, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by local legislators.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, December 6, 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 369-601-211. 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 must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for 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 795-715-206. 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>.

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.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing, or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www14.tceq.texas.gov/epic/eComment/ within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Restore the Grasslands LLC and Harrington/Turner Enterprises, LP at the address stated above or by calling Ms. Ashley Broughton, P.E., Project Manager, LJA Engineering, Inc., at (713) 380-4431.

Issuance Date: October 22, 2021

TRD-202104251

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2021



Notice and Comment Hearing: Draft Permit No. 03785

This is a notice for a notice and comment hearing on Federal Operating Permit Number O3785. During the notice and comment hearing informal questions on the Federal Operating Permit will be answered and formal comments will be received. The Texas Commission on Environmental Quality (TCEQ) has scheduled the notice and comment hearing regarding this application and draft permit as follows:

Date: December 9, 2021

Time: 7:00 p.m.

Application and Draft Permit. Intercontinental Terminals Company LLC, 1943 Independence Parkway South, La Porte, Texas 77571-9801, an Other Warehousing and Storage facility, has applied to the TCEQ for a Renewal of Federal Operating Permit (herein referred to as permit) No. O3785, Application No. 31086 to authorize operation of the ITC Pasadena Terminal. The area addressed by the application is located at 1030 Ethyl Road in Pasadena, Harris County, Texas 77503. This application was received by the TCEQ on August 26, 2020.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, will codify the conditions under which the site must operate. The TCEQ Executive Director recommends issuance of the draft permit. The purpose of a federal operating permit is to improve overall compliance with the rules governing air pollution control by clearly listing all applicable requirements, as defined in Title 30 Texas Administrative Code (30 TAC) §122.10. The permit will not authorize new construction or new emissions.

Notice and Comment Hearing. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration and an informal discussion period with commission staff members will begin during the first 30 minutes. During the informal discussion period, the public is encouraged to ask questions and engage in open discussion with the applicant and the TCEQ staff concerning this application and draft permit. Issues raised during this discussion period **will only** be addressed in the formal response to comments if the issue is also presented during the hearing. After the conclusion of the informal discussion period, the TCEQ will conduct a notice and comment hearing regarding the application and draft permit. Individuals may present oral statements when called upon in order of registration. A five-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal and answer questions after the hearing. The purpose of this hearing will be to receive formal public comment which the TCEQ will consider in determining whether to revise and/or issue the permit and in determining the accuracy and completeness of the permit. Any person may attend this meeting and submit written or oral comments. The hearing will be conducted in accordance with the Texas Clean Air Act §382.0561, as codified in the Texas Health and Safety Code, and 30 TAC §122.340.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 262-734-523. It is recommended that you join the webinar and register for the hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 at least one day prior to the hearing to register for the hearing and for assistance in accessing the hearing and participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (562) 247-8422 and enter access code 854-821-323.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

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>.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the

TCEQ Public Education Program toll free at (800) 687-4040 or (800) RELAY-TX (TDD), at least five business days prior to the hearing.

Any person may also submit written comments before the hearing to the Texas Commission on Environmental Quality, Office of Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Written comments should include (1) your name, address, and daytime telephone number, and (2) the draft permit number found at the top of this notice.

A notice of proposed final action that includes a response to comments and identification of any changes to the draft permit will be mailed to everyone who submitted: written comments, and/or hearing requests, attended the hearing, or requested to be on the mailing list for this application. This mailing will also provide instructions for public petitions to the U.S. Environmental Protection Agency (EPA) to request that the EPA object to the issuance of the proposed permit. After receiving a petition, the EPA may only object to the issuance of a permit which is not in compliance with applicable requirements or the requirements of 30 TAC Chapter 122.

Mailing List. In addition to submitting public comments, a person may ask to be placed on a mailing list for this application by sending a request to the TCEQ Office of the Chief Clerk at the address above. Those on the mailing list will receive copies of future public notices (if any) mailed by the Chief Clerk for this application.

Information. For additional information about this permit application or the permitting process, please contact the Texas Commission on Environmental Quality, Public Education Program, MC-108, P.O. Box 13087, Austin, Texas 78711-3087 or toll free at (800) 687-4040. General information about the TCEQ can be found at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained for Intercontinental Terminals Company LLC by calling Michael Gaudet, Environmental Compliance Manager at (281) 884-0360.

Notice Issuance Date: October 22, 2021

TRD-202104311

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 26, 2021



Notice of Commission Action and Response to Public Comments on General Permit TXG870000

After consideration of all public comments and the responses to such comments, the Texas Commission on Environmental Quality (TCEQ) reissued Texas Pollutant Discharge Elimination System General Permit Number TXG870000 during its public meeting on October 20, 2021. This general permit authorizes the application of pesticides into or over, including near waters of the United States (U.S.) for the control of mosquito and other insect pests, vegetation and algae pests, animal pests, area-wide pests, and forest canopy pests. The TCEQ also issued the Commission's Response to Public Comment. The issued permit and the Commission's Response to Public Comment are available at the TCEQ Central File Room and on the TCEQ website at: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

TRD-202104252

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 22, 2021



Notice of Commission Action on General Permit TXG110000

The Texas Commission on Environmental Quality (TCEQ) reissued Texas Pollutant Discharge Elimination System General Permit Number TXG110000 during its public meeting on October 20, 2021. This general permit authorizes discharges of facility wastewater and stormwater associated with industrial activities into or adjacent to water in the state from ready-mixed concrete plants, concrete products plants, and their associated facilities (Standard Industrial Classification (SIC) 3271, 3272, and 3273). The issued permit is available at the TCEQ Central File Room and on the TCEQ website at: <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

TRD-202104249

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 21, 2021



Notice of Correction to Agreed Order Number 9

In the June 25, 2021, issue of the *Texas Register* (46 TexReg 3943), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 9, for City of Bartlett, Docket Number 2019-0955-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2019-0955-MWD-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202104308

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 26, 2021



Notice of Hearing on Gladieux Metals Recycling, LLC: SOAH Docket No. 582-22-0332; TCEQ Docket No. 2021-0943-IHW; Permit No. 50204

APPLICATION.

Gladieux Metals Recycling, LLC, 302 Midway Road, Freeport, Texas 77542, operates a commercial industrial and hazardous waste management facility which recycles spent catalysts applied to Texas Commission on Environmental Quality (TCEQ) for a permit renewal and a major amendment to authorize structural changes for the facility's permitted units, the reclassification of a containment building to a container storage area, add wastes authorized to be accepted and stored at the facility, remove certain requirements to divide a consolidated permit into its separate authorizations, and remove authorization of air emissions that are authorized under TCEQ Air Permit No. 9803. The facility is located at 302 Midway Road, Freeport, 77542 in Brazoria County, Texas. TCEQ received the application by Gulf Chemical & Metallurgical Corporation (GCMC) on June 19, 2012. On December 06, 2017, the TCEQ approved a permit modification transferring the permit from GCMC to the new owner, Gladieux Metals Recycling, LLC. The TCEQ received an amended application from Gladieux Metals Recycling, LLC, on September 30, 2019. As a public courtesy, we have provided the following Webpage to an online map of the site or the fa-

cility's general location. The online map is not part of the application or the notice: <https://arcg.is/1nn0KT>. For the exact location, refer to the application.

The Coastal Management Program boundary is the area along the Texas Coast of the Gulf of Mexico as depicted on the map in 31 Texas Administrative Code Section 503.1 and includes part or all of the following counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson and Orange. The TCEQ Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

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 Freeport Public Library, 410 North Brazosport Boulevard, Freeport, Texas 77541.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - December 6, 2021

Freeport Police Department

Council Chambers Room

430 North Brazosport Boulevard

Freeport, Texas 77541

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 September 2, 2021. In addition to these issues, the judge may consider additional issues if certain criteria are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 335, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. At least one session of the hearing will be held in the county in which the facility is located. 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.

This notice satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S. 6901 et seq. and 40 CFR 124.10. Once the final permit of the TCEQ and U.S. Environmental Protection Agency (EPA) are effective regarding this facility, they will implement the requirements of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The final permit decision will also implement the federally authorized state requirements.

The TCEQ and EPA have entered into a joint permitting agreement whereby permits will be issued in Texas in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Ann., Chapter 361, and RCRA, as amended. In order for the applicant to have a fully effective RCRA permit, both the TCEQ and EPA must issue the permit. All permit provisions are fully enforceable under State and Federal law. The State of Texas has not received full HSWA authority. Areas in which the TCEQ has not been authorized by EPA are denoted in the draft permit with an asterisk (*). Persons wishing to comment or request a hearing on a HSWA requirement denoted with an asterisk (*) in the draft permit should also notify, in writing, Chief, RCRA Permits Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. EPA will accept hearing requests submitted to the TCEQ.

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. The mailing address for the TCEQ is P.O. Box 13087, Austin Texas 78711-3087.

Further information may also be obtained from Gladieux Metals Recycling, LLC at the address stated above or by calling Alison Landis at (979) 415-1519.

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: October 22, 2021

TRD-202104281

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2021



Notice of Hearing on Kendall West Utility, LLC; SOAH Docket No. 582-22-0489; TCEQ Docket No. 2021-0755-MWD; Permit No. WQ0015787001

APPLICATION.

Kendall West Utility, LLC, P.O. Box 1335, Boerne, Texas 78006, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015787001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day. TCEQ received this application on April 17, 2019.

The facility will be located approximately 500 feet north of Eagle Drive, 1,375 feet east-southeast of the intersection of Eagle Drive and Tapatío Drive East, in Kendall County, Texas 78006. The treated effluent will be discharged via Outfall 001 to an unnamed tributary, thence to Masters Lake, thence to Frederick Creek, thence to Lake Oz, thence to Frederick Creek, thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin; and via Outfall 002 to an unnamed tributary, thence to Smith Investment Co. Lake No. 1, thence to Smith Investment Co. Lake No. 3, thence to Masters Lake, thence to Frederick Creek, thence to Lake Oz, thence to Frederick

Creek, thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary (Outfall 002), limited aquatic life use for the unnamed tributary (Outfall 001), and high aquatic life use for Smith Investment Co. Lake Nos. 1 and 3, Masters Lake, and Frederick Creek. The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), 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 Masters Lake, Smith Investment Co. Lake Nos. 1 and 3, and Frederick Creek, which have 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 Webpage 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=db5bac44afb468bb-ddd360f8168250f&marker=-98.806944%2C29.768888&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 Patrick Heath Public Library, 451 North Main Street, Boerne, 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. - November 29, 2021

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 161 331 7577

Password: 1hZ7E3

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 331 7577

Password: 076371

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 September 13, 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 Kendall West Utility, LLC at the address stated above or by calling Ms. Jamie Miller, P.E., Integrated Water Services, Inc., at (303) 993-3713.

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: October 22, 2021

TRD-202104282

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2021



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **December 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 the 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 the 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 December 9, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: NNS Group Inc dba Shady Grove Food Mart; DOCKET NUMBER: 2020-1317-PST-E; TCEQ ID NUMBER: RN102285327; LOCATION: 1427 West Shady Grove Road, Irving, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ AO, Docket Number 2018-0173-PST-E, Ordering Provision Number 2.b.1., by failing to monitor USTs in a manner which will detect a release at a frequency of at least once every 30 days; TWC, §26.3475(d) and 30 TAC §334.49(a)(2) and (4), by failing to ensure that corrosion protection is provided to all underground and/or totally or partially submerged metal components of the UST system; TWC, §26.3475(d) and 30 TAC §334.49(a)(2) and (c)(2)(C), by failing to inspect the impressed cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; and 30 TAC §334.10(b)(2) and TCEQ AO, Docket Number 2018-0173-PST-E, Ordering Provision Number 2.a., by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$41,513; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202104310

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 26, 2021



Notice of Request for Public Comment and Notice of a Public Meeting on Two Draft Total Maximum Daily Loads for Indicator Bacteria in Sandy Creek and Wolf Creek

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) has made available for public comment two draft Total Maximum Daily Loads (TMDLs) for indicator bacteria in Sandy Creek and Wolf Creek, of the Neches River Basin, within Jasper and Tyler Counties.

The purpose of the meeting is to provide the public an opportunity to comment on the draft TMDLs in two assessment units: Sandy Creek 0603A_01 and Wolf Creek 0603B_01.

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage analysis, margin of safety, pollutant load allocation, seasonal variation, public participation, and implementation and reasonable assurance.

After the public comment period, TCEQ may revise the draft TMDLs if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments received will be made available on TCEQ's website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action by EPA. Upon approval by EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

Public Meeting and Testimony. The public meeting for the draft TMDLs will be held via video conference on **November 23, 2021, at 6:00 p.m.** To register and join the meeting, follow the link <https://tinyurl.com/SandyCreekAndWolfCreekTMDL>. Please place your computer's microphone or telephone on **MUTE** so that background noise is not heard and turn your video **OFF**. Meeting documents are available on the project webpage at <https://www.tceq.texas.gov/waterquality/tmdl/nav/118-sandy-wolf-creeks-bacteria>.

Please periodically check <https://www.tceq.texas.gov/waterquality/tmdl/nav/118-sandy-wolf-creeks-bacteria> **before the meeting date for meeting related updates.**

During this meeting, individuals will have the opportunity to present oral statements. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all oral statements have been received.

Written Comments. Please choose one of the methods provided to submit your written comments. Written comments on the draft TMDLs may be submitted to Jazmyn Milford, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted electronically to <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments submitted via the *eComments* system. All written comments must be received at TCEQ by midnight on December 9, 2021 and should reference *Two Total Maximum Daily Loads for Indicator Bacteria in Sandy Creek and Wolf Creek*.

For further information regarding the draft TMDLs, please contact Jazmyn Milford at Jazmyn.Milford@tceq.texas.gov. The draft TMDLs can be obtained via TCEQ's website at <https://www.tceq.texas.gov/waterquality/tmdl/nav/118-sandy-wolf-creeks-bacteria>.

Persons with disabilities who have special communication or other accommodation needs who are planning to participate in the meeting should contact Jazmyn Milford at Jazmyn.Milford@tceq.texas.gov. Requests should be made as far in advance as possible.

TRD-202104243

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 21, 2021



Notice of Water Rights Application

Notice Issued October 22, 2021

APPLICATION NO. 13481A; Stallings Creighton Properties, LP, 3005 N Big Spring St., Suite 2, Midland, Texas 79705, Applicant, seeks to amend Water Use Permit No. 13481 to increase the amount of groundwater conveyed via the bed and banks of a reservoir on an unnamed tributary of Beals Creek, Colorado River Basin to 40,000 acre-feet per year, to increase the discharge rate to 56 cfs (25,000 gpm), and to increase the diversion rate to 40 cfs (18,000 gpm) in Howard County, ZIP

code 79720. More information on the application and how to participate in the permitting process is given below. The application and fees were received on June 3, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 20, 2021.

The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions requiring compliance with an operational plan and requiring the Applicant to maintain any required authorizations related to the groundwater wells. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ webpage at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. 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.

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-202104283

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2021



TCEQ Docket No. 97-0364-IHW-E; Notice of Order Dismissing Agreed Order with Mckinney Smelting, Inc.

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the dismissal of an Agreed Order (AO) with McKinney Smelting, Inc. (Respondent). In accordance with Texas Water Code (TWC), §7.075, this notice and opportunity to comment on the Order Dismissing the AO 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 December 9, 2021. The commission will consider any written comments received, and the commission may withdraw or withhold approval of an Order to Dismiss 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 an Order to Dismiss an AO is not required to be published if those changes are made in response to written comments.

This notice concerns the dismissal of an AO issued by the TCEQ following consideration at the commission's December 2, 1998 agenda. The AO resulted from an enforcement action under the authority of TWC, Chapter 26 and Texas Health & Safety Code (THSC), Chapter 361.

FINDINGS OF FACT

After its December 2, 1998, the commission approved the AO. The AO became effective on or about December 14, 1998.

The AO concerns an enforcement action in which Respondent, as owner and operator of a scrap metal recycling facility located at 300 N. McDonald, McKinney, Collin County, Texas (the "Facility"), violated TWC, Chapter 26 and TCEQ Rules.

The AO required Respondent to perform certain corrective actions at the Facility and to pay an administrative penalty in the amount of one hundred ten thousand four hundred dollars (\$110,400.00). The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by McKinney and determined that McKinney was unable to pay part of the administrative penalty. Respondent paid five thousand dollars (\$5,000.00) of the administrative penalty, and one hundred five thousand four hundred dollars (\$105,400.00) of the penalty was deferred contingent upon McKinney's timely and satisfactory compliance with all the terms of the AO.

Pursuant to Ordering Provision Number 6 of the AO, the AO will terminate only upon compliance with all the terms and conditions set forth therein, which includes completion of the technical requirements.

On May 22, 2001, the Executive Director notified Respondent, in writing, (a) of his determination that Ferex Corporation failed to remediate the contamination at the Facility under the Compliance Agreement attached to the AO and incorporated therein by reference by Finding of Fact Number 4 of the AO; and (b) that Respondent is responsible for remediation of the Facility.

Respondent has complied with all remedial technical requirements which have become due under the AO.

Inspection and maintenance of an existing cover system every three (3) years from June 24, 2017, for a period of thirty (30) years is required before Respondent achieves adequate remediation of the Facility. Therefore, Respondent has not satisfied Ordering Provision Number 2.b.4. of the AO.

Respondent no longer owns or operates the Facility as of June 27, 2018.

Columbus Fund 2021C, L.P. ("Applicant") submitted an application to remediate the Facility under the oversight of the Voluntary Cleanup Program ("VCP") of the TCEQ Remediation Division. Remediation under the oversight of the VCP will satisfy the technical requirements of the AO that address remediation of the Facility.

The Facility is currently ineligible for participation in the VCP because it is subject to the AO.

The Facility would be eligible for participation in the VCP if the AO is dismissed.

Applicant did not contribute to those conditions at the Facility which formed the basis for the violations alleged in the AO.

Good cause exists to dismiss the AO for the purpose of allowing Applicant to implement further remedial measures at the Facility under the VCP. Applicant intends to remediate the Facility to support an unrestricted residential use.

CONCLUSIONS OF LAW

As evidenced by Finding of Fact Number 4, the AO will not terminate until Respondent completes the corrective actions required therein.

As evidenced by Finding of Fact Numbers 5, 6, and 7, Respondent satisfied all corrective actions that have become due under the AO, and certain performance obligations pursuant to technical requirements in Ordering Provision Number 2.b. of the AO remain outstanding.

As evidenced by Finding of Fact Number 8, Respondent no longer owns or operates the Facility.

As evidenced by Finding of Fact Number 9, Applicant submitted an application to remediate the Facility under the oversight of the VCP.

As evidenced by Finding of Fact Number 10 and pursuant to THSC, §361.603(a), the Facility is currently ineligible for the VCP because it is subject to the AO.

Pursuant to THSC, §361.603, the Facility will become eligible for the VCP on dismissal of the AO.

Pursuant to THSC, §361.017, the commission is responsible for the management of industrial solid waste ("ISW") and shall control all aspects of the management of ISW by all practical and economically feasible methods consistent with its powers and duties.

Pursuant to THSC, §361.017(c) and TWC, §5.102(a), the commission has the powers to perform any acts necessary and convenient to the exercise of its jurisdiction and powers.

WRITTEN COMMENTS

Written comments concerning the Order Dismissing the AO should be submitted to Courtney Sprague, at the commission's central office at P.O. Box 13087, MC175, Austin, Texas 78711-3087, or faxed to (512) 239-3434. All comments should reference Docket Number 97-0364-IHW-E. All comments must be received by 5:00 p.m., December 9, 2021. For further information or to obtain a copy of the proposed Order Dismissing the AO, contact Courtney Sprague with the Litigation Division at (512) 239-2436.

TRD-202104309

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: October 26, 2021



Texas Superfund Registry 2021

BACKGROUND

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361, to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). Pursuant to THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) or listed in accordance with THSC, §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been deleted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

SITES LISTED ON THE STATE SUPERFUND REGISTRY

The state Superfund registry identifying those facilities that are *listed* and have been determined to pose an imminent and substantial endangerment are set out in descending order of Hazard Ranking System (HRS) scores as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (United States Highway 80) in Colorado City, Mitchell County: tank farm and refinery.
2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. Camtraco Enterprises, Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County: fuel storage/fuel blending/distillation.
4. Pioneer Oil Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.
5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.
6. Voda Petroleum Inc. Located approximately 1.25 miles west of the intersection of Farm-to-Market Road (FM) 2275 (George Richey Road) and FM 3272 (North White Oak Road), 2.6 miles north-northeast of Clarksville City, Gregg County: waste oil recycling.
7. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.
8. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.
9. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.
10. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.
11. McBay Oil and Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.
12. Materials Recovery Enterprises (MRE). Located about four miles southwest of Ovalo, near United States Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.
13. Hu-Mar Chemicals. Located north of McGlothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.
14. American Zinc. Located approximately 3.5 miles north of Dumas on United States Highway 287 and five miles east of Dumas on Farm Road 119, Moore County: zinc smelter.
15. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating and municipal waste.
16. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.
17. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.
18. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.
19. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.
20. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.
21. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.
22. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

23. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

24. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

25. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

26. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

27. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

SITES PROPOSED FOR LISTING ON THE STATE SUPERFUND REGISTRY

Those facilities that may pose an imminent and substantial endangerment and that have been *proposed* to the state Superfund registry are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of FM Road 1431 in the community of Kingsland, Llano County: former coin-operated dry cleaning facility.

2. Angus Road Groundwater Site. Located beneath the 4300 block of Angus Road, west of Odessa, Ector County: groundwater plume of unknown source.

3. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

4. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of United States Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

5. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of FM 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

6. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.

7. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

8. Avinger Development Company (ADCO). Located on the south side of State Highway 155, approximately 0.25 mile east of the intersection with State Highway 49, Avinger, Cass County: wood treatment.

9. Wigginsville Road Groundwater Plume. Located on the eastern edge of the Conroe Oilfield, southeast of Conroe, Montgomery County: groundwater plume of an unknown origin.

10. Moss Lake Road Groundwater Site. Located approximately 0.25 mile north of the intersection of North Moss Lake Road and Interstate Highway 20, approximately four miles east of Big Spring, Howard County: groundwater plume of an unknown source.

11. Ballard Pits. Located at the end of Ballard Road (also known as Ballard Lane), west of its intersection with County Road 73, northwest of Robstown, Nueces County: disposal of oil field drilling muds and petroleum wastes.

12. Cass County Treating Company. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

13. Tucker Oil Refinery/Clinton Manges Oil Refinery. Located on the east side of United States Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

14. Bailey Metal Processors, Inc. Located at 509 San Angelo Highway (United States Highway 87), in Brady, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

15. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

16. Scrub-A-Dubb Barrel Company. Located at 1102 North Ash Avenue, Lubbock, Lubbock County: former drum cleaning and reconditioning business.

CHANGES SINCE THE OCTOBER 2020 SUPERFUND REGISTRY PUBLICATION

The Wigginsville Road Groundwater Plume was proposed to the state Superfund registry on March 12, 2021 (46 TexReg 1678). There were no sites listed to or deleted from the state Superfund registry since its last publication, in the *Texas Register* on October 23, 2020 (45 TexReg 7633).

SITES DELETED FROM THE STATE SUPERFUND REGISTRY

To date, 57 sites have been *deleted* from the state Superfund registry.

Aluminum Finishing Company, Harris County;

Archem Company/Thames Chelsea, Harris County;

Aztec Ceramics, Bexar County;

Aztec Mercury, Brazoria County;

Barlow's Wills Point Plating, Van Zandt County;

Bestplate, Inc., Dallas County;

Butler Ranch, Karnes County;

Cox Road Dump Site, Liberty County;

Crim-Hammett, Rusk County;

Dorchester Refining Company, Titus County;

Double R Plating Company, Cass County;

El Paso Plating Works, El Paso County;

EmChem Corporation, Brazoria County;

Force Road Oil, Brazoria County;

Gulf Metals Industries, Harris County;

Hageron Road Drum, Fort Bend County;

Harkey Road, Brazoria County;

Hart Creosoting, Jasper County;

Harvey Industries, Inc., Henderson County;

Hicks Field Sewer Corp., Tarrant County;

Hi-Yield, Hunt County;

Higgins Wood Preserving, Angelina County;

Houston Lead, Harris County;

Houston Scrap, Harris County;

J.C. Pennco Waste Oil Service, Bexar County;

James Barr Facility, Brazoria County;

Kingsbury Metal Finishing, Guadalupe County;
LaPata Oil Company, Harris County;
Lyon Property, Kimble County;
McNabb Flying Service, Brazoria County;
Melton Kelly Property, Navarro County;
Munoz Borrow Pits, Hidalgo County;
Newton Wood Preserving, Newton County;
Niagara Chemical, Cameron County;
Old Lufkin Creosoting, Angelina County;
Permian Chemical, Ector County;
Phipps Plating, Bexar County;
PIP Minerals, Liberty County;
Poly-Cycle Industries, Ellis County;
Poly-Cycle Industries, Jacksonville, Cherokee County;
Rio Grande Refinery I, Hardin County;
Rio Grande Refinery II, Hardin County;
Rogers Delinted Cottonseed-Colorado City, Mitchell County;
Rogers Delinted Cottonseed-Farmersville, Collin County;
Sampson Horrice, Dallas County;
SESCO, Tom Green County;
Shelby Wood Specialty, Inc., Shelby County;
Sherman Foundry, Grayson County;
Solvent Recovery Services, Fort Bend County;
South Texas Solvents, Nueces County;
State Marine, Jefferson County;
Stoller Chemical Company, Hale County;
Texas American Oil, Ellis County;
Thompson Hayward Chemical, Knox County;
Waste Oil Tank Services, Harris County;
Woodward Industries, Inc., Nacogdoches County; and
Wortham Lead Salvage, Henderson County.

REMOVAL FROM INCLUSION

The Lindsay Post Company Site, located in Alto, Cherokee County, was removed from inclusion on the registry as a site that was proposed for listing in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427).

How to Access Agency Records

Agency records for these sites may be accessible for viewing or copying by contacting the TCEQ Central File Room (CFR) Customer Service Center, Building E, North Entrance, at 12100 Park 35 Circle, Austin, Texas 78753, phone number (512) 239-2900, fax (512) 239-1850, or e-mail cfrreq@tceq.texas.gov. CFR Customer Service Center staff will assist with providing program area contacts for records not maintained in the CFR. Accessible parking is available on the east side of Building D, located near building ramps, between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

Inquiries concerning the agency Superfund program records may also be directed to Superfund staff at the Superfund toll-free line (800) 633-9363 or e-mail superfnd@tceq.texas.gov.

TRD-202104244
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 21, 2021

◆ ◆ ◆ General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 11, 2021, to October 22, 2021. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, October 29, 2021. The public comment period for this project will close at 5:00 p.m. on Sunday, November 28, 2021.

FEDERAL AGENCY ACTIONS:

Applicant: WEB Fleeting, LP

Location: The project site is located in the Old River Channel of the San Jacinto River, at 17112 Market Street, in Channelview, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.788608, -95.077220

Project Description: The applicant proposes to maintain existing previously authorized structures and mechanically dredge approximately 50,000 cubic yards of material from a 12-acre area of the Old River Channel of the San Jacinto River, to a depth of approximately 14 feet below mean lower low water. This depth includes a 12-foot operational depth with 1 foot of over dredge and 1 foot of advanced maintenance dredging. The purpose of this proposed dredging is to accommodate operations at the existing barge terminal. The proposed dredged material will be placed in a pre-prepared upland confined dredge material placement area, or a hazardous waste landfill.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2002-00218. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1039-F1

Applicant: Adloy, LLC

Location: The project site is located in the San Jacinto River, at 2739 Highland Shores Drive, in Highlands, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.838291, -95.100869

Project Description: The applicant requests After-The-Fact authorization for the excavation of a 1.09-acre area for the creation of a boat basin. The applicant also proposes to dredge approximately 4,500 cubic yards of material from a 0.54-acre area to a depth of 10 feet below Mean Lower Low Water to expand the boat basin, and to dredge approximately 66,500 cubic yards of material from a 6.48-acre barge basin to a depth of 18 feet below Mean Lower Low Water to provide safe ingress and egress of barges. The facility is currently a sand and gravel operation and a dredge material placement area.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2016-00082. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1040-F1

Applicant: City of League City

Location: The project site is located in Clear Creek and adjacent waters, including wetlands, west of Interstate Highway 45 (IH-45), between Farm-to-Market 518 and the NASA Road 1 Bypass intersection with IH-45, in Galveston and Harris Counties, Texas.

Latitude & Longitude (NAD 83): 29.507395, -95.128826

Project Description: The applicant proposes to permanently impact, through the discharge of 1,728 cubic yards of fill material, approximately 0.325 acre of estuarine emergent wetlands, 0.607 acre of palustrine emergent wetlands, 0.793 acre of palustrine forested wetlands, and 0.088 acre of other waters of the U.S. during roadway construction activities associated with the 1.7-mile extension of Landing Boulevard. The proposed roadway will extend Landing Boulevard from just north of FM 518 (West Main Street), in League City, Galveston County, to a proposed roundabout with the proposed NASA Road 1 Bypass extension, which will connect to the existing NASA Road 1 Bypass at Interstate Highway 45, in Webster, Harris County, Texas. The proposed roadway extension includes a bridge over Clear Creek with a length of 2,772 feet from approach-to-approach. The bridge structure requires authorization by the US Coast Guard; the Corps will evaluate the discharges of fill material associated with the construction of the bridge approaches. The proposed roadway and bridge will consist of two, 12-foot lanes in each direction; one, 10-foot shared use path to the west; and one, 5-foot sidewalk to the east. Approximately 1.812 acres of wetlands and waters will be temporarily impacted during construction activities associated with the proposed roadway expansion.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2015-00690. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 22-1046-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202104297

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: October 25, 2021

◆ ◆ ◆
Official Notice to Vessel Owner/Operator

Pursuant to §40.254, Tex Nat. Res. Code

Preliminary Report

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 8/25/2021.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on August 25, 2021, the Commissioner of the General Land Office (GLO), has determined that a 26' sailboat, vessel identified as GLO Vessel Tracking Number 2-86002 is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located in Offat's Bayou, Galveston County, Texas. The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value. Finally, the GLO determined that, because of the vessel's location and condition, the vessel poses an unreasonable threat to public health & safety and welfare, and is a threat to navigation.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code, (OSPR) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined the person responsible for abandoning this vessel (GLO Tracking Number 2-86002) and recommends that the Commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact us at (512) 463-2613.

TRD-202104295

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: October 25, 2021

Official Notice to Vessel Owner/Operator

Pursuant to §40.254, Tex Nat. Res. Code

Preliminary Report

Authority

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 8/25/2021.

Facts

Based on an investigation conducted by Texas General Land Office-Region 2 staff on August 25, 2021, the Commissioner of the General Land Office (GLO), has determined that a 23' sailboat, vessel identified as GLO Vessel Tracking Number 2-86003 is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is located in Offat's Bayou, Galveston County, Texas.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value. Finally, the GLO determined that, because of the vessel's location and condition, the vessel poses an unreasonable threat to public health & safety and welfare, and is a threat to navigation.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of § 40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined the person responsible for abandoning this vessel (GLO Tracking Number 2-86003) and recommends that the Commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information contact us at (512) 463-2613.

TRD-202104296

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: October 25, 2021



Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission published new emergency rule 26 TAC §500.21 in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7109). Due to an error by the Texas Register, the expiration date of the emergency rule was published incorrectly. The correct expiration date for the emergency rule is February 4, 2022.

TRD-202104255



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Collaborative Care Management Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 19, 2021, at 1:00 p.m., to receive public comments on proposed Medicaid payment rates for the Collaborative Care Management Services.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL: <https://attendeegotowebinar.com/register/8422603633781796878> Webinar ID: 519-279-099

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone by calling:

Conference Number: (631) 992-3221

Phone Audio Passcode: 899-844-783

If you are new to GoToWebinar, please download the GoToMeeting app at <https://global.gotomeeting.com/install/626873213> before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. A recording of the hearing will be archived and can be accessed on demand at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 125 in the John H Winters Building located at 701 W 51st Street, Austin, Texas or may access a live stream of the meeting by following the link above. For the live stream, select the "Winters Live" tab.

Proposal. The payment rates for the Medicaid Legislative Policy Review of Collaborative Care Services are proposed to be effective June 1, 2022.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://pfd.hhs.texas.gov/rate-packets> on or after November 9, 2021. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider

Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202104229

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 20, 2021



Public Notice - Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver Amendment

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The current waiver is approved through September 2030. The proposed effective date for this amendment is March 5, 2022.

Senate Bill 1096, 86th Legislature, Regular Session, 2019 directs HHSC to seek a waiver of comparability to exempt STAR Kids members from all preferred drug list (PDL) prior authorizations (PA) to meet the requirements of Section 533.005, Government Code (a)(23)(L), as added by SB 1096, 86th Texas Legislature.

Proposed Changes

Specifically, SB 1096 removes all the Preferred Drug List (PDL) prior authorizations (PAs) for all members of the STAR Kids program except those PAs based on evidence-based clinical criteria and nationally recognized peer-reviewed information, and those PAs designed to minimize waste, fraud, or abuse. This amendment will not result in any changes to the formulary. This amendment will give a member the opportunity to be prescribed any drug whether there is preferred or non-preferred status although a member will not have access to drugs not covered by Medicaid.

HHSC is proposing to waive requirements in 42 CFR §440.240, related to comparability of services for groups, because only members of the STAR Kids program will be allowed this option. 42 CFR §440.240 requires the services available to any categorically needy beneficiary under the plan are not less in amount, duration, and scope than those services available to a medically needy beneficiary; and the services must be available to any individual in the following groups are equal

in amount, duration, and scope for all beneficiaries within the group: (1) The categorically needy and (2) A covered medically needy group.

Financial Analysis

Preferred drugs are medications recommended by the Texas Drug Utilization Review Board for their efficaciousness, clinical significance, cost effectiveness, and safety. The primary impact due to this change results in a loss of federal and supplemental rebate revenues absent a PDL for these members. However, budget neutrality (BN) does not consider rebate revenues so this aspect of the policy change has no impact to BN. The only potential impact to budget neutrality would be due to shift in utilization of prescribed drugs; that impact is unable to be estimated.

Evaluation Design

The CMS-approved 1115 evaluation design focusing on demonstration years 7-11 culminates in a Draft Interim Evaluation Report due March 31, 2024, as required by STC 86. The CMS-approved THTQIP evaluation design includes 5 evaluation questions, and 13 evaluation hypotheses. HHSC anticipates the STAR Kids PDL PA exemption may result in increased utilization of prescription drugs. Increased utilization of prescription drugs may impact With Waiver and Without Waiver costs, which are used in the evaluation's assessment of Demonstration cost outcomes. Additionally, increased utilization of prescription drugs may impact the STAR Kids Add-On Component, which will be included in the Interim Evaluation Report #1 (due on March 31, 2024). The state will direct the external evaluator to interpret and present pertinent findings within the context of this amendment.

The THTQIP Demonstration Extension evaluation design submitted to CMS on July 14, 2021, includes 1 evaluation question, 5 evaluation hypotheses, and 13 measures on the STAR Kids MMC program. HHSC determined not to include evaluation questions or measures related to STAR Kids prescription drug use, however it is possible that increased utilization of prescription drugs among STAR Kids beneficiaries may indirectly impact proposed measures. The state will direct the external evaluator to interpret and present pertinent findings within the context of this amendment.

Enrollment, Cost Sharing and Service Delivery

There is no anticipated impact on enrollment, and there will not be beneficiary cost sharing for this benefit. This benefit would fall outside the current objectives and goals of the approved demonstration but will increase access to non-preferred prescribed drugs. This amendment will allow a STAR Kids member to access any drug on the Medicaid formulary without requiring the prescriber to obtain a PDL PA except those PAs based on evidence-based clinical criteria and nationally recognized peer-reviewed information, and those PAs designed to minimize waste, fraud, or abuse.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments by December 6, 2021, regarding this amendment by contacting Dawn Roland by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Dawn Roland, Waiver Coordinator, Policy Development Support

701 W. 51st Street

Mail Code: H310

Austin, Texas 78751

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

Telephone

(512) 438-4366

Fax

(512) 438-3061

TRD-202104322

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 27, 2021

Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of September 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
HOUSTON	INNOVATIVE DOWNHOLE SOLUTIONS INC	L07135	HOUSTON	00	09/16/21
THROUGHOUT TX	WESTON SOLUTIONS INC	L07137	FRISCO	00	09/28/21
THROUGHOUT TX	PREMIUM INSPECTION & TESTING	L07136	NEDERLAND	00	09/16/21

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
ALLEN	DYNAMIC EARTH LLC	L06779	ALLEN	05	09/17/21
DALLAS	MEMORIAL MRI & DIAGNOSTIC PLLC DBA PRIME DIAGNOSTIC IMAGING	L06309	DALLAS	08	09/29/21
DALLAS	UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L05947	DALLAS	49	09/27/21
DALLAS	PETNET SOLUTIONS INC	L05193	DALLAS	61	09/21/21
EARLY	SOLARIS OILFIELD SITE SERVICES OPERATING LLC	L07103	EARLY	01	09/29/21
EL PASO	EL PASO CARDIOLOGY ASSOCIATES PA	L05162	EL PASO	20	09/22/21
FREERPORT	SOLVAY USA INC	L02807	FREERPORT	47	09/20/21
HOUSTON	RLS (USA) INC	L05517	HOUSTON	32	09/22/21
HOUSTON	QC LABORATORIES INC	L04750	HOUSTON	33	09/16/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HUMBLE	RADIOMEDIX INC	L06990	HUMBLE	07	09/29/21
IRVING	BAYLOR MEDICAL CENTER AT IRVING DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - IRVING	L02444	IRVING	119	09/27/21
MANSFIELD	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	18	09/22/21
NACOGDOCHES	LION STAR NACOGDOCHES HOSPITAL LLC	L01071	NACOGDOCHES	56	09/17/21
NEDERLAND	PREMIUM INSPECTION & TESTING INC	L07136	NEDERLAND	01	09/21/21
PASADENA	THE GOODYEAR TIRE & RUBBER COMPANY	L04321	PASADENA	19	09/27/21
SAN ANGELO	SHANNON MEDICAL CENTER	L02174	SAN ANGELO	81	09/22/21
SAN ANTONIO	BHS PHYSICIANS NETWORK INC	L06750	SAN ANTONIO	19	09/29/21
SAN MARCOS	CHRISTUS SANTA ROSA HEALTH CARE CORPORATION DBA CHRISTUS SANTA ROSA HOSPITAL - SAN MARCOS	L07081	SAN MARCOS	01	09/21/21
SUGAR LAND	METHODIST HEALTH CENTERS	L05788	SUGAR LAND	51	09/21/21
THROUGHOUT TX	ALAMO PRESSURE PUMPING LLC	L07094	ARLINGTON	02	09/29/21
THROUGHOUT TX	SAM- CONSTRUCTION SERVICES LLC	L07018	AUSTIN	01	09/27/21
THROUGHOUT TX	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L00740	AUSTIN	175	09/29/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

THROUGHOUT TX	GESSNER ENGINEERING LLC	L03733	BRYAN	30	09/15/21
THROUGHOUT TX	GORRONDONA ENGINEERING SERVICES INC	L06872	HOUSTON	04	09/17/21
THROUGHOUT TX	VERSA INTEGRITY GROUP INC	L06669	HOUSTON	33	09/27/21
THROUGHOUT TX	TERRACON CONSULTANTS INC	L05268	HOUSTON	67	09/15/21
THROUGHOUT TX	ACUREN INSPECTION INC	L01774	LA PORTE	305	09/24/21
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	01	09/21/21
THROUGHOUT TX	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE THE HEART GROUP	L06501	PLANO	19	09/27/21
THROUGHOUT TX	MIDTEX TESTING LLC	L06674	WACO	03	09/27/21
WACO	ASCENSION PROVIDENCE	L01638	WACO	78	09/17/21
WALLER	NRG MANUFACTURING INC	L06550	WALLER	06	09/23/21

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
DFW AIRPORT	SIKORSKY AIRCRAFT CORPORATION	L06418	DFW AIRPORT	06	09/20/21
THROUGHOUT TX	QUALITY INSPECTION & TESTING INC	L06371	BEAUMONT	12	09/15/21

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
CROWLEY	AZTEC MANUFACTURING PARTNERSHIP LTD	L06080	CROWLEY	03	09/17/21

TRD-202104312
Scott A. Merchant
Interim General Counsel
Department of State Health Services
Filed: October 26, 2021

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Licensing Actions for Radioactive Materials

During the first half of October 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
FORT WORTH	TARRANT COUNTY COLLEGE DISTRICT	L07138	FORT WORTH	00	10/08/21
HOUSTON	TMH PHYSICIAN ORGANIZATION	L07139	HOUSTON	00	10/04/21

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
ABILENE	HENDRICK MEDICAL CENTER	L02433	ABILENE	135	10/01/21
AMARILLO	BSA HOSPITAL LLC	L06556	AMARILLO	18	10/01/21
AUSTIN	WORLDWIDE CLINICAL TRIALS EARLY PHASE SERVICES/BIOANALYTICAL SCIENCES LLC	L04427	AUSTIN	24	10/08/21
BEAUMONT	CARDIAC CONSULTANTS PA DBA OUTPATIENT CARDIOVASCULAR SERVICES	L05029	BEAUMONT	15	10/04/21
CARROLLTON	SANA HEALTHCARE CARROLLTON LLC DBA CARROLLTON REGIONAL MEDICAL CENTER	L07078	CARROLLTON	03	10/05/21
CUERO	DEWITT MEDICAL DISTRICT	L02448	CUERO	36	10/04/21
DEER PARK	BILFINGER INC	L07048	DEER PARK	02	10/01/21
DENTON	TEXAS ONCOLOGY PA	L05815	DENTON	20	10/12/21
DUNCANVILLE	AFRIDI HEART CARE PA	L06005	DUNCANVILLE	16	10/12/21

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HARLINGEN	THE UNIVERSITY OF TEXAS RIO GRANDE VALLEY	L06754	HARLINGEN	09	10/11/21
HOUSTON	UIH AMERICA INC	L07090	HOUSTON	03	10/04/21
PLANO	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE LEGACY HEART CENTER	L06582	PLANO	11	10/04/21
SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO	L01279	SAN ANTONIO	176	10/04/21
SHERMAN	TEXAS ONCOLOGY PA	L05019	SHERMAN	38	10/05/21
SUGAR LAND	TEXAS ONCOLOGY PA	L05816	SUGAR LAND	20	10/11/21
THROUGHOUT TX	IIA FIELD SERVICES LLC	L06933	ABILENE	07	10/13/21
THROUGHOUT TX	TEAM INDUSTRIAL SERVICES INC	L00087	ALVIN	255	10/11/21
THROUGHOUT TX	TEXAS A&M UNIVERSITY	L00448	COLLEGE STATION	159	10/06/21
THROUGHOUT TX	CITGO REFINING AND CHEMICALS COMPANY LP	L06183	CORPUS CHRISTI	10	10/14/21
THROUGHOUT TX	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	182	10/05/21
THROUGHOUT TX	PREMIUM INSPECTION & TESTING	L07136	NEDERLAND	02	10/14/21
THROUGHOUT TX	BRASKEM AMERICA INC	L06444	PORT LAVACA	02	10/14/21
VICTORIA	VICTORIA OF TEXAS LP DBA DETAR HEALTHCARE SYSTEM	L01630	VICTORIA	53	10/01/21

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
DEER PARK	SHELL OIL COMPANY	L04554	DEER PARK	44	10/14/21
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L06366	HOUSTON	21	10/14/21
IRVING	HEALTHTEXAS PROVIDER NETWORK	L06414	IRVING	05	10/01/21
THROUGHOUT TX	GEOSCIENCE ENGINEERS LLC	L06398	DALLAS	02	10/08/21

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
MIDLAND	RELIANCE OILFIELD SERVICES LLC	L06884	MIDLAND	03	10/05/21
MISSION	IZAGUIRRE ENGINEERING GROUP LLC	L06278	MISSION	02	10/05/21
SPRING	TRINITY EMERGENCY HOSPITAL LLC	L07074	SPRING	02	10/01/21
SPRING	SOUTHWESTERN IMAGING SYSTEMS AND SERVICES LP	L06241	SPRING	07	10/11/21

TRD-202104314
 Scott A. Merchant
 Interim General Counsel
 Department of State Health Services
 Filed: October 26, 2021

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Texas Department of Housing and Community Affairs

First Amendment to the CDBG-CV Texas Community Resiliency Program Notice of Funding Availability

The Texas Department of Housing and Community Affairs (TDHCA) is pleased to announce a Notice of Funding Availability (NOFA) of \$38 million in Community Development Block Grant CARES Act (CDBG-CV) funds for the Community Resiliency Program (CRP) for non-entitlement cities and counties to create, expand, or enhance public fac-

ilities that provide medical care, social services, and/or non-congregate housing and increase the community's long-term resiliency and ability to mitigate current and future coronavirus outbreaks. Further, because few rural and small metro areas have had the opportunity to implement mobile response units or emergency medical services that would have a positive impact on their capability to reach certain households, CRP funds allow for the purchase of equipment to increase capacity to carry out a public service, which meets CDBG-CV eligibility.

This First Amendment changes the minimum amount request for Public Services, extends the application deadline, and increases the administration available for public service

Documents including the Amended NOFA, and the application are available at: www.tdhca.state.tx.us/CDBG-CARES.htm. The CRP application period has been amended and is open from October 1, 2021, through 5:00 p.m., Austin local time, on January 19, 2022.

Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted. Subscription to the Department's LISTSERV is available at <http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p>.

Questions regarding the CRP NOFA and/or Application may be addressed to Rudy Bentancourt at (512) 475-4063 or CRP@tdhca.state.tx.us.

TRD-202104288

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: October 25, 2021

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Texas Department of Insurance

Company Licensing

Application for ManhattanLife Assurance Company of America, a foreign life, accident and/or health company, to change its name to ManhattanLife Insurance and Annuity Company. The home office is in Little Rock, Arkansas.

Application to do business in the state of Texas for FBAlliance Insurance Company, a foreign fire and/or casualty company. The home office is in Schaumburg, Illinois.

Application for Western Select Insurance Company, a foreign fire and/or casualty company, to change its name to Pie Casualty Insurance Company. The home office is in Chicago, Illinois.

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 Amy Garcia, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202104320

James Person

General Counsel

Texas Department of Insurance

Filed: October 27, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2369 "\$50, \$100 OR \$500!"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2369 is "\$50, \$100 OR \$500!". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2369 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2369.

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, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, \$50.00, \$100 and \$500.

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. 2369 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	WIN\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

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 (2369), 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: 2369-0000001-001.

H. Pack - A Pack of the "\$50, \$100 OR \$500!" 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 "\$50, \$100 OR \$500!" Scratch Ticket Game No. 2369.

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 "\$50, \$100 OR \$500!" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly. 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-six (56) 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-six (56) 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-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a de-

fective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: 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. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A Ticket may have up to ten (10) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: The "MONEY BAG" (WIN\$) Play Symbol may appear up to five (5) times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50, \$100 OR \$500!" Scratch Ticket Game prize of \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "\$50, \$100 OR \$500!" 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.

C. 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.

D. 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 "\$50, \$100 OR \$500!" 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 "\$50, \$100 OR \$500!" 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 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2369. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2369 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50.00	960,000	12.50
\$100	300,000	40.00
\$500	12,000	1,000.00

*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 9.43. 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. 2369 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. 2369, 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-202104294
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 25, 2021

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 24, 2021, for designation as an eligible telecommunications provider (ETP) in the State of Texas under 16 Texas Administrative Code §26.417.

Docket Title and Number: Application of Poka Lambro Telecommunications, Ltd. For Designation as an Eligible Telecommunications Provider, Project Number 52743.

The Application: Poka Lambro Telecommunications, Ltd. seeks designation as an eligible telecommunications provider (ETP) under 16 Texas Administrative Code §26.418.

Poka Lambro Telecommunications, Ltd. seeks an ETP designation to be eligible to receive funding from the Texas universal service fund program for Lifeline service.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than November 25, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Project Number 52743.

TRD-202104324
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 27, 2021

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Texas Department of Transportation

Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901 *et seq.*, the Texas Department of Transportation (TxDOT) is requesting project proposals to support the targets and strategies of its traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These

targets and strategies form the basis for the Federal Fiscal Year 2023 (FY 2023) Texas Highway Safety Plan (HSP).

Authority and responsibility for funding of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §401 *et seq.*), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Behavioral Traffic Safety Section (TRF-BTS) is an integral part of TxDOT and works through 25 districts for local projects. The program is administered at the state level by TxDOT's Traffic Safety Division (TRF). The Executive Director of TxDOT is the designated Governor's Highway Safety Representative.

The following is information related to the FY 2023 General Traffic Safety Grants - Request for Proposals (RFP). Please review the full FY 2023 RFP located online at:

<https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP/RFP2023.pdf>.

This request for proposals does not include solicitations for Selective Traffic Enforcement Program (STEP) proposals. Information regarding STEP proposals for FY 2023 can be found at:

<https://www.txdot.gov/apps/egrants/eGrantsHelp/RFP.html> and FY 2023 STEP proposals will be submitted under a separate process.

General Proposals for highway safety funding are due to the TRF-BTS no later than 5:00 p.m. CST, January 05, 2022.

All questions regarding the development of proposals must be submitted by sending an email to: TRF_RFP@txdot.gov by COB on November 29, 2021. A document with a list of questions/answers (Q&A document) will be posted at:

<https://www.txdot.gov/apps/egrants/eGrantsHelp/rfp.html> by 5:00 p.m. CST, December 03, 2021.

A webinar on general proposal submissions via the Traffic Safety eGrants system will be hosted by the TRF-BTS Austin headquarters staff. The webinar will be conducted on Wednesday, November 17, 2021, from 9:00 a.m. CST to 12:00 p.m. CST for General Traffic Safety Grant Proposals and from 1:00 p.m. to 4:00 p.m. CST for STEP Proposals. For access information please go to

<https://www.txdot.gov/apps/egrants/eGrantsHelp/rfp.html>.

The Program Needs Section of the RFP includes Performance Measures tables which outline the targets, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-BTS is seeking proposals in all program areas but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs Section of the RFP.

The proposals must be completed using eGrants, which can be found by going to

www.txdot.gov/apps/egrants.

TRD-202104238
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 20, 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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