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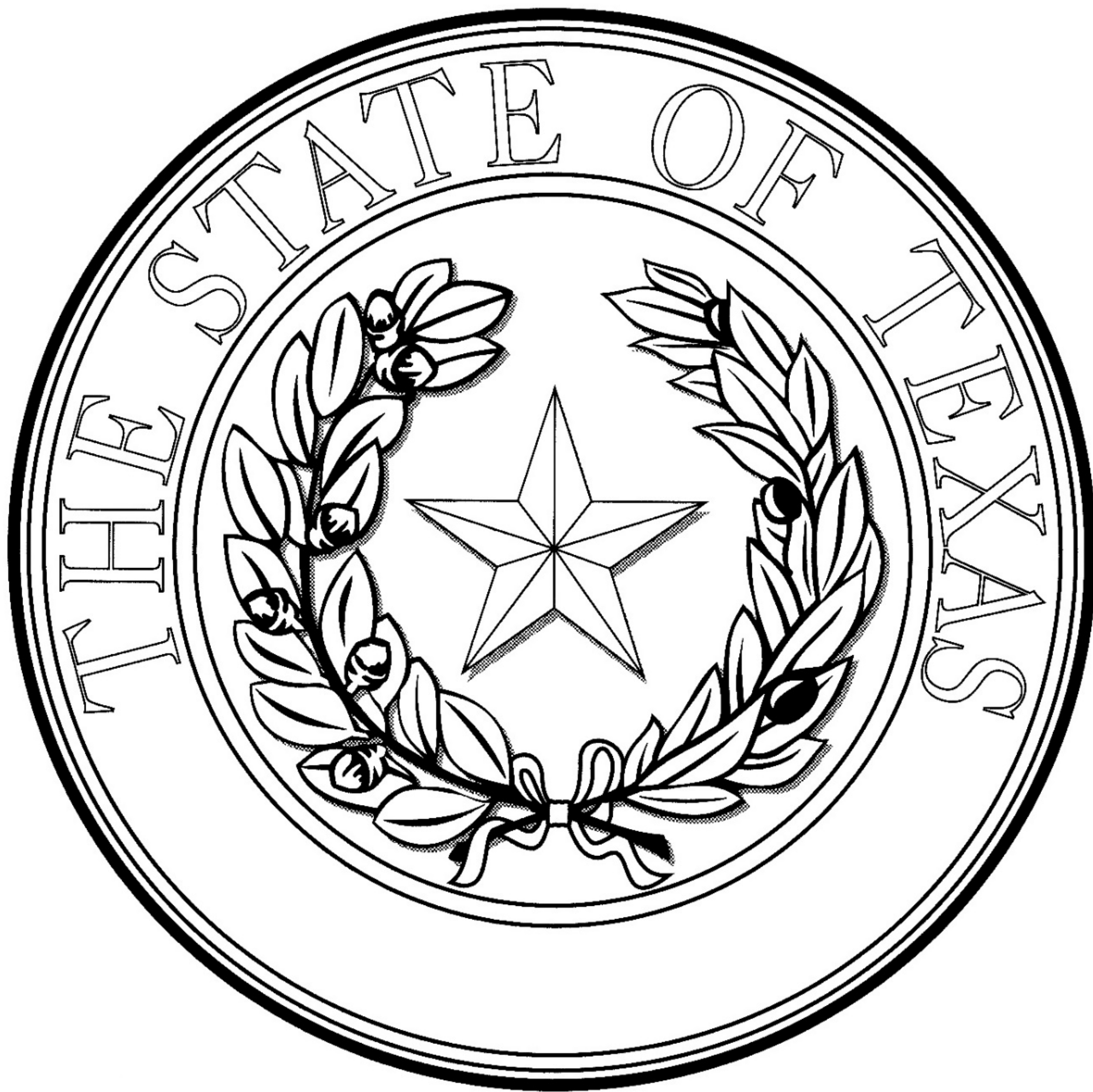

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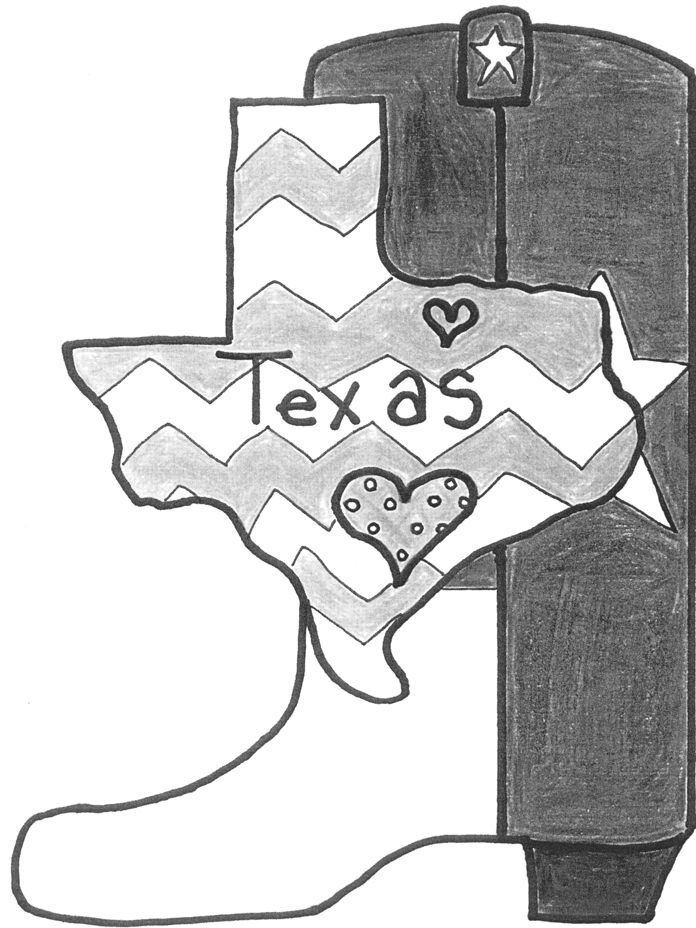
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THE GOVERNOR

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 December 1, 2021

Appointed to the Governor's Committee to Support the Military, for a term to expire at the pleasure of the Governor, Edward W. "Walt" Koenig, III of San Angelo, Texas (replacing Michael L. "Mike" Boyd of Christoval, who resigned).

Greg Abbott, Governor

TRD-202105078

Proclamation 41-3867

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of November, 2021.

Greg Abbott, Governor

TRD-202104997

Proclamation 41-3868

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation on June 25, June 30, July 15, July 30, August 29, September 28, and October 28, 2021, including to modify the list of affected counties and therefore declare a state of disaster in those counties, and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations; and

WHEREAS, communications with county officials have confirmed that the certified conditions now also pose an ongoing and imminent threat of disaster in Chambers County;

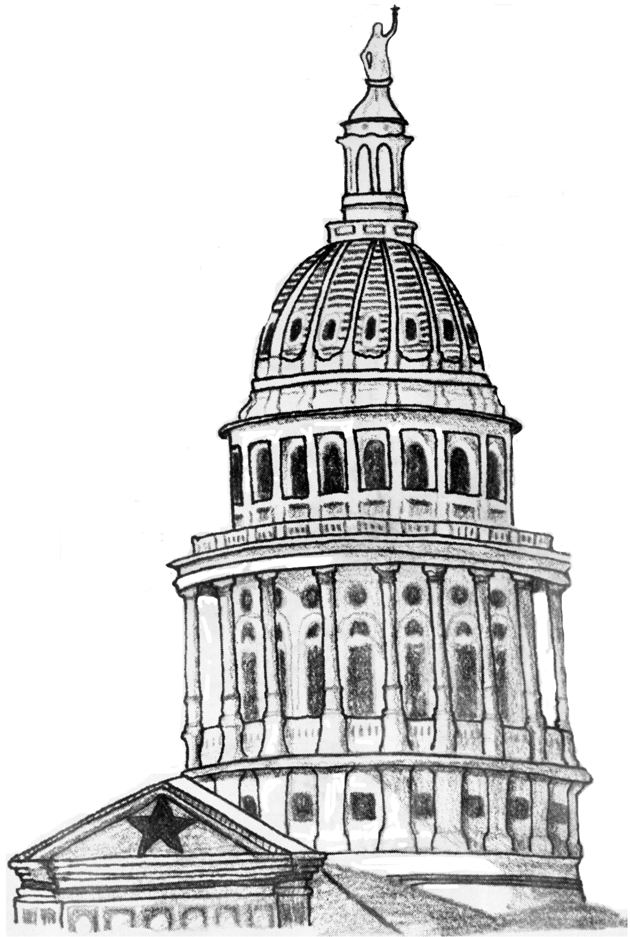
NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster for Chambers County, and I do hereby renew the disaster proclamation, as amended and renewed, for Bee, Brewster, Brooks, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Edwards, Frio, Galveston, Goliad, Gonzales, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kinney, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, Schleicher, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala counties, and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed on June 25, June 30, July 15, July 30, August 29, September 28, and October 28, 2021, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of November, 2021.

Greg Abbott, Governor

TRD-202104998



THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. KP-0394

The Honorable Dustanna Rabe

Hopkins County Attorney

128 Jefferson Street, Suite B

Sulphur Springs, Texas 75482

Re: Eligibility to hold municipal office under section 22.008 of the Local Government Code and related questions (RQ-0412-KP)

S U M M A R Y

Local Government Code subsection 22.008(a) prohibits an officer of a Type A general-law municipality entrusted with the collection or custody of municipal funds from holding office while in default to the municipality until the amount, plus interest, is paid.

A court would likely conclude that applying subsection 22.008(a) to an officer in default to the county, or to an officer residing with another person in whose name a utilities account in default is held, goes beyond the authority the statute provides.

Because the Legislature has determined the qualifications for a Type A general-law municipality's governing body, a court would likely conclude that the City has no authority to add to those qualifications.

A court would likely find that the general ordinance authority found in section 51.012 of the Local Government Code does not authorize an ordinance disqualifying an officer on the basis of default to the county. And since the Legislature has already determined what disqualifies an elected officer from continuing to hold office, a court would likely find that an ordinance adding to those disqualifications is "inconsistent with state law" such that section 51.012 does not permit it.

Opinion No. KP-0395

The Honorable Donna Campbell, M.D.

Chair, Committee on Veterans Affairs & Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Texas medical school compliance with Coats-Snowe Amendment, which prohibits discrimination against health care entities that refuse to provide or undergo training for induced abortion (RQ-0413-KP)

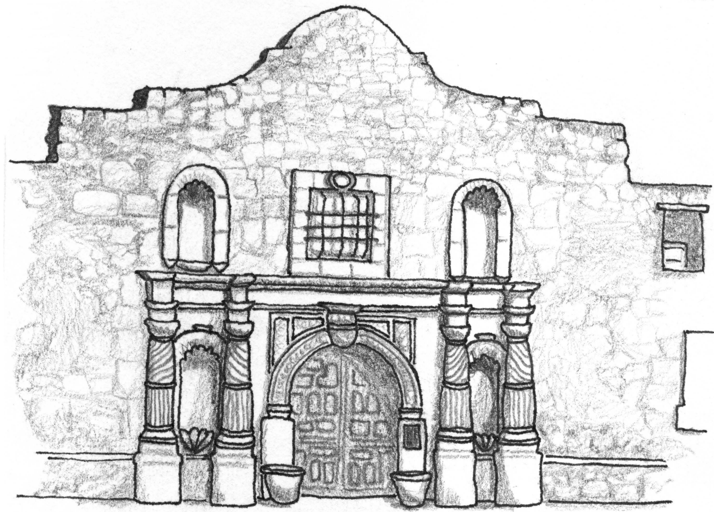
S U M M A R Y

The Coats-Snowe Amendment, found in 42 U.S.C. §238n, prohibits the State of Texas from discriminating against physicians, medical students, or graduate medical education training programs for their refusal to participate in abortion related training. It requires the State of Texas to disregard Accreditation Council for Graduate Medical Education accreditation standards that compel the provision of induced abortion training on an opt-out basis, thereby allowing graduate medical education programs to provide induced abortion training on an elective, opt-in basis.

Furthermore, a graduate medical education training program that forces a person to affirmatively opt-out of such training raises constitutional and religious freedom concerns and implicates conscience rights of doctors and students. Given these constitutional and statutory concerns, a graduate medical education program should implement opt-in induced abortion training.

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

TRD-202105060
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 14, 2021



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-569: Whether a candidate or officeholder may use her existing political contributions to establish a general-purpose political committee (GPAC), which she will control. (AOR-65X)

Whether a candidate or officeholder may receive a salary from a GPAC that the candidate or officeholder established or controls. (AOR-653)

SUMMARY

A candidate or officeholder may use her own political contributions to establish a GPAC and may control such a GPAC.

Political contributions "accepted" by a candidate-established or controlled GPAC are accepted by a person as a candidate or officeholder and therefore may not be converted to personal use by the controlling candidate or officeholder and may not be used to pay the controlling candidate or officeholder a salary.

Personal use restrictions notwithstanding, the Penal Code gift and honorarium restrictions would allow such employment under only a narrow set of facts, and such employment may violate the standards of conduct for a public servant.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on December 9, 2021.

TRD-202105076
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: December 14, 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 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment is renewing the effectiveness of emergency amended §810.4 for a 60-day period. The text of the emergency rule was originally published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5332).

Filed with the Office of the Secretary of State on December 13, 2021.

TRD-202105035
Aaron, Pierce, PhD, LPC, LSOTP-S
Chairman
Council on Sex Offender Treatment
Original effective date: August 22, 2021
Expiration date: February 17, 2022
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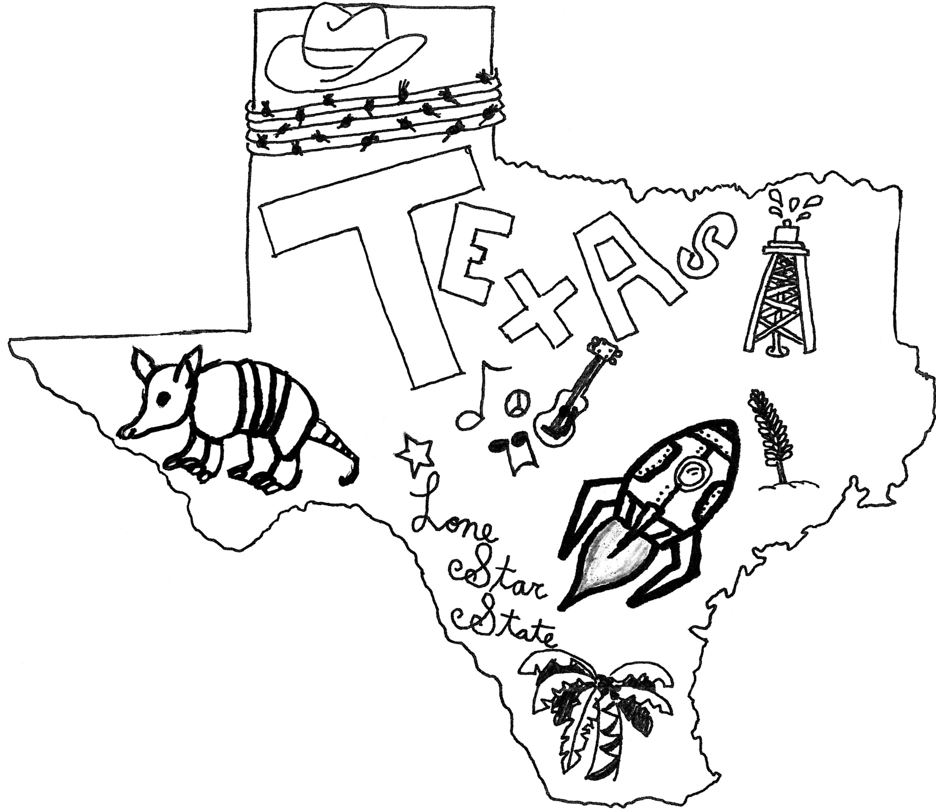
Texas
Lone Star State

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8212

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care.

BACKGROUND AND PURPOSE

Texas Health and Human Services Commission (HHSC) makes Uncompensated Care (UC) payments to qualifying hospitals that serve a large number of Medicaid recipients and uninsured individuals. Attachment H of the 1115 Waiver establishes rules and guidelines for the State to claim federal matching funds for UC payments. This proposal amends the definitions of certain provider classes, describes a time frame during which the provider classes are classified into certain categories, and updates and clarifies other provisions.

House Bill (H.B.) 3301, 86th Legislature, allowed qualifying hospitals in low-population areas to enter into merger agreements, subject to receipt of a Certificate of Public Advantage (COPA). In 2019, COPAs were approved for two merger agreements. The mergers resulted in each of the merged entities being designated a Sole Community Hospital (SCH) by the federal Centers for Medicare and Medicaid Services (CMS). This SCH designation in turn resulted in each of the merged entities to be classified as rural hospitals under HHSC rules, significantly shifting the rural set-aside funds for Demonstration Year 10 (DY10).

As a result, HHSC will update the rule to redefine the classification criteria for a rural hospital. This will include an update to the rural set-aside amount to address this large shift in funds, by setting the rural set-aside to the maximum costs for DY10. For Demonstration Year 11 (DY11) and onward, the rural set-aside will be the lesser of DY10 costs or that demonstration year's maximum costs.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8212(b)(19) adds new criterion to classify hospitals as a rural hospital. A rural hospital includes a hospital that is designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH) before October 1, 2021. Subparagraph (D) is added to define a hospital as a rural hospital if the hospital has 100 or fewer beds, is designated by Medicare as a CAH, a SCH, or a Rural Referral Center (RRC), and is located in an Metropolitan Statistical Area (MSA).

The proposed amendment to §355.8212(g)(6)(D)(ii)(I)(-b-)(-1-) updates the set aside for rural hospitals for demonstration year ten to be calculated like demonstration year nine.

The proposed amendment to §355.8212(g)(6)(D)(ii)(I)(-b-)(-2-) updates the demonstration years.

Other edits include replacing references to "Rate Analysis" with "Provider Finance" and correcting grammar for clarity.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will not require an increase in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand an existing rule;

(7) the proposed rule will not change 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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules and does not require any change

in current business practices. Participation in the UC Program is optional.

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 this rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be continued allocation of funds to rural hospitals.

Trey Wood, also determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule will not result in costs to those required to comply. Participation in the UC Program is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a hybrid webinar (in person and online). The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and the HHSC Provider Finance Hospitals website at https://rad.hhs.texas.gov/hospitals-clinic/hospital-services/disproportionate-share-hospitals.

Please contact Rene Cantu at PFD_Hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Rene Cantu in the HHSC Provider Finance for Hospitals department at PFD_Hospitals@hhsc.state.tx.us.

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, 4601 Guadalupe Street, Austin, Texas 78751 (Mail Code H-400); P.O. Box 149030, Austin, Texas 78714-9030 (Mail Code H-400); by fax to (512)-730-7475; or by email to PFD_Hospitals@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R040" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed 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 authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

§355.8212. Waiver Payments to Hospitals for Uncompensated Charity Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section to help defray the uncompensated cost of charity care provided by eligible hospitals on or after October 1, 2019. Waiver payments to hospitals for uncompensated care provided before October 1, 2019, are described in §355.8201 of this division (relating to Waiver Payments to Hospitals for Uncompensated Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Allocation amount--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncompensated-care provider pool or individual hospital, as described in subsections (f)(2) and (g)(6) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

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

(5) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association Principles and Practices Board Statement 15 (December 2012). Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(6) Data year--A 12-month period that is described in §355.8066 of this subchapter (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health

care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this subchapter.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital (DSH) program year. Demonstration year one corresponded to the 2012 DSH program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this subchapter (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include the following professions only:

(A) Certified Registered Nurse Anesthetists;

(B) Nurse Practitioners;

(C) Physician Assistants;

(D) Dentists;

(E) Certified Nurse Midwives;

(F) Clinical Social Workers;

(G) Clinical Psychologists; and

(H) Optometrists.

(16) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(17) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(18) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(19) Rural hospital--A hospital enrolled as a Medicaid provider that [is]:

(A) is located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) was designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH) before October 1, 2021; or

(C) is designated by Medicare as a CAH, SCH, or Rural Referral Center (RRC); and

[*(i)*] is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

[~~*(ii)* is located in an MSA but has 100 or fewer licensed beds.~~]

(D) meets all of the following:

(i) has 100 or fewer beds;

(ii) is designated by Medicare as a CAH, SCH or a RRC; and

(iii) is located in an MSA.

(20) Service Delivery Area (SDA)--The counties included in any HHSC-defined geographic area as applicable to each MCO.

(21) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(22) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (5) of this subsection.

(23) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

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

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must be enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment to the hospital under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Provider Finance [~~Rate Analysis~~] Department on the earlier of the following occurrences after the documents are executed:

(-a-) the date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) the new affiliation cut-off date posted on HHSC Provider Finance [~~Rate Analysis~~] Departments' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation to HHSC as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Provider Finance [~~Rate Analysis~~] Department's website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Provider Finance [~~Rate Analysis~~] Department receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph is not eligible to receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC; and

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Provider Finance [~~Rate Analysis~~] Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities. Prior to processing uncompensated-care payments for the final payment period within a waiver demonstration year for any uncompensated-care pool or sub-pool described in subsection (f)(2) of this section, HHSC will survey the governmental entities that provide public funds for the hospitals in that pool or sub-pool to determine the amount of funding available to support payments from that pool or sub-pool.

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

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(6) of this section.

(2) HHSC will establish the following uncompensated-care pools: a state-owned hospital pool, a non-state-owned hospital pool, a physician group practice pool, a governmental ambulance provider pool, and a publicly owned dental provider pool.

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs, and the Texas Center for Infectious Disease.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncompensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph. HHSC will allocate the funds among non-state-owned provider pools based on the following amounts.

(i) For the physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool:

(I) for demonstration year nine, an amount to equal the percentage of the applicable total uncompensated-care pool amount paid to each group in demonstration year six; and

(II) for demonstration years ten and after, an amount to equal a percentage determined by HHSC annually based on factors including the amount of reported charity-care costs for the previous demonstration year and the ratio of reported charity-care costs to hospitals' charity-care costs.

(ii) For the non-state-owned hospital pool, all of the remaining funds after the allocations described in clause (i) of this subparagraph. HHSC will further allocate the funds in the non-state-owned hospital pool among all hospitals in the pool and create non-state-owned hospital sub-pools as follows:

(I) calculate a revised maximum payment amount for each non-state-owned hospital as described in subsection (g)(6) of this section and allocate that amount to the hospital; and

(II) group all non-state-owned hospitals into sub-pools based on their geographic location within one of the state's Medicaid service delivery areas (SDAs), as described in subsection (g)(7) of this section.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section and timely received by HHSC. If sufficient funds are not available for all payments for which the providers in each pool or sub-pool are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(4) If for any reason funds allocated to a provider pool or to individual providers within a sub-pool are not paid to providers in that pool or sub-pool for the demonstration year, the funds will be redistributed to other provider pools based on each pool's pro-rata share of remaining uncompensated costs for the same demonstration year. The redistribution will occur when the reconciliation for that demonstration year is performed.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by a hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, a hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), a hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation.

(A) A hospital's annual maximum uncompensated-care payment amount is the sum of the components described in clauses (i) - (iv) of this subparagraph.

(i) The hospital's inpatient and outpatient charity-care costs pre-populated in or reported on the uncompensated-care application, as described in paragraph (3) of this subsection, reduced by interim DSH payments for the same program period, if any, that reimburse the hospital for the same costs. To identify DSH payments that reimburse the hospital for the same costs, HHSC will:

(I) Use self-reported information on the application to identify charges that can be claimed by the hospital in both DSH and UC, convert the charges to cost, and reduce the cost by any applicable payments described in paragraph (3) of this subsection;

(II) Calculate a DSH-only uninsured shortfall by reducing the hospital's total uninsured costs, calculated as described in §355.8066 of this chapter, by the result from subclause (I) of this clause;

(III) Reduce the interim DSH payment amount by the sum of:

(-a-) the DSH-only uninsured shortfall calculated as described in subclause (II) of this clause; and

(-b-) the hospital's Medicaid shortfall, calculated as described in §355.8066 of this chapter.

(ii) Other eligible costs for the data year, as described in paragraph (4) of this subsection;

(iii) Cost and payment adjustments, if any, as described in paragraph (5) of this subsection; and

(iv) For each large public hospital, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments to that hospital and private hospitals for the same demonstration year.

(B) A hospital also participating in the DSH program cannot receive total uncompensated-care payments under this section (related to inpatient and outpatient hospital services provided to uninsured charity-care individuals) and DSH payments that exceed the hospital's total eligible uncompensated costs. For purposes of this requirement, "total eligible uncompensated costs" means the hospital's state payment cap for interim payments or DSH hospital-specific limit (HSL) in the UC reconciliation plus the unreimbursed costs of inpatient and outpatient services provided to uninsured charity-care patients not included in the state payment cap or HSL for the corresponding program year.

(3) Hospital charity-care costs.

(A) For each hospital required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, HHSC will pre-populate the uncompensated-care application described in paragraph (1) of

this subsection with the uninsured charity-care charges and payments reported by the hospital on schedule S-10 for the hospital's cost reporting period ending in the calendar year two years before the demonstration year. For example, for demonstration year 9, which coincides with the federal fiscal year 2020, HHSC will use data from the hospital's cost reporting period ending in the calendar year 2018. Hospitals should also report any additional payments associated with their uninsured charity charges that were not captured in worksheet S-10 in the application described in paragraph (1) of this subsection.

(B) For each hospital not required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, the hospital must report its hospital charity-care charges and payments in compliance with the instructions on the uncompensated-care application described in paragraph (1) of this subsection.

(i) The instructions for reporting eligible charity-care costs in the application will be consistent with instructions contained in schedule S-10.

(ii) An IMD may not report charity-care charges for services provided during the data year to patients aged 21 through 64.

(4) Other eligible costs.

(A) In addition to inpatient and outpatient charity-care costs, a hospital may also claim reimbursement under this section for uncompensated charity care, as specified in the uncompensated-care application, that is related to the following services provided to uninsured patients who meet the hospital's charity-care policy:

(i) direct patient-care services of physicians and mid-level professionals; and

(ii) certain pharmacy services.

(B) A payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this subchapter.

(5) Adjustments. When submitting the uncompensated-care application, a hospital may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts; and

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application, and provide sufficient information for HHSC to verify the link between the changes to the hospital's operations or circumstances and the specified numbers used to calculate the amount of the adjustment.

(i) Such supporting documentation must include:

(I) a detailed description of the specific changes to the hospital's operations or circumstances;

(II) verifiable information from the hospital's general ledger, financial statements, patient accounting records or other relevant sources that support the numbers used to calculate the adjustment; and

(III) if applicable, a copy of any relevant contracts, financial assistance policies or other policies/procedures that verify the change to the hospital's operations or circumstances.

(ii) HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) Notwithstanding the availability of adjustments impacting the cost and payment data described in this section, no adjustments to the state payment cap will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this subchapter.

(6) Reduction to stay within uncompensated-care pool allocation amounts. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool allocation amount.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(B) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool allocation amount from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the allocation amount for the pool, each provider in the pool is eligible to receive its maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool allocation amount.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the allocation amount for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) The physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool. HHSC will calculate a capped payment amount equal to the product of each provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) The non-state-owned hospital pool.

(I) For rural hospitals, HHSC will:

(-a-) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all rural hospitals in the pool;

(-b-) in demonstration year:

(-1-) nine and ten, set aside for rural hospitals the amount calculated in item (-a-) of this subclause; or

(-2-) eleven [~~ten~~] and after, set aside for rural hospitals the lesser of the amount calculated in item (-a-) of this subclause or the amount set aside for rural hospitals in demonstration year ten [~~nine~~];

(-c-) calculate a ratio to equal the rural hospital set-aside amount from item (-b-) of this subclause divided by the total annual maximum uncompensated-care payment amount for rural hospitals from item (-a-) of this subclause; and

(-d-) calculate a capped payment amount equal to the product of each rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (-c-) of this subclause.

(II) For non-rural hospitals, HHSC will:

(-a-) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all non-rural hospitals in the pool;

(-b-) calculate an amount to equal the difference between the pool allocation amount from subsection (f)(2) of this section and the set-aside amount from subclause (I)(-b-) of this clause;

(-c-) calculate a ratio to equal the result from item (-b-) of this subclause divided by the total annual maximum uncompensated-care payment amount for non-rural hospitals from item (-a-) of this subclause; and

(-d-) calculate a capped payment amount equal to the product of each non-rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (-c-) of this subclause.

(III) The revised maximum uncompensated-care payment for the payment period equals the lesser of:

(-a-) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(-b-) the difference between the capped payment amount from subclause (I) or (II) of this clause and the prior period payments from subparagraph (B)(i) of this paragraph.

(IV) HHSC will allocate to each non-state-owned hospital the revised maximum uncompensated-care payment amount from subclause (III) of this clause.

(7) Non-state-owned hospital SDA sub-pools. After HHSC completes the calculations described in paragraph (6) of this subsection, HHSC will place each non-state-owned hospital into a sub-pool based on the hospital's geographic location in a designated Medicaid SDA for purposes of the calculations described in subsection (h) of this section.

(8) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is a duplication of costs.

(9) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will:

(i) in demonstration year nine, be based on uninsured charity-care costs reported by the hospital on schedule S-10 of the CMS 2552-10 cost report used for purposes of sizing the UC pool, or on documentation submitted for that purpose by each hospital not required to submit schedule S-10 with their cost report; and

(ii) in demonstration years ten and after, be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (6)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in the computation of an advance payment amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for each hospital in a pool or sub-pool for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for hospitals in a pool or sub-pool to receive the amounts described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to hospitals in each pool or sub-pool will be determined based on the amount of funds transferred by the affiliated governmental entities as follows:

(A) If the governmental entities transfer the maximum amount referenced in paragraph (1) of this subsection, the hospitals in the pool or sub-pool will receive the full payment amount calculated for that payment period.

(B) If the governmental entities do not transfer the maximum amount referenced in paragraph (1) of this subsection, each hospital in the pool or sub-pool will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals in the pool or sub-pool.

(3) Final payment opportunity. Within payments described in this section, governmental entities that do not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments to hospitals in the pool or sub-pool at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) to the final payments up to the maximum amount; and

(B) to remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the governmental entities in proportion to each entity's initial contribution to funding the program for that hospital's SDA in the applicable program year.

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

(3) HHSC may recoup from any current or future Medicaid payments as follows:

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

(B) If[~~, within 30 days of the hospital's receipt of HHSC's written notice of recoupment,~~] the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so within 30 days of the hospital's receipt of HHSC's written notice of recoupment, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

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 December 13, 2021.

TRD-202105036
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 23, 2022
For further information, please call: (737) 867-7813

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2022 SLIHP.

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

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

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

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2022 SLIHP, as required by Tex. Gov't Code 2306.0723.

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

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

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

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2022 SLIHP.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2022 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period for the rule will be held Monday, December 20, 2021, to Monday, January 10, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, MONDAY, JANUARY, 10, 2022.

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

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

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

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 December 13, 2021.

TRD-202105007
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 463-7961

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2022 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2022 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2020, through August 31, 2021).

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are associated with this action, and therefore no costs warrant being offset.

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

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

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

1. The proposed new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2022 SLIHP, as required by Tex. Gov't Code 2306.0723.

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

3. The proposed new rule changes do not require additional future legislative appropriations.

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

5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule will not expand, limit, or repeal an existing regulation.

7. The proposed new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the proposed rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the proposed rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the proposed rule will adopt by reference the 2022 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the proposed rule will adopt by reference the 2022 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the proposed rule will adopt by reference the 2022 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2022 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2022 SLIHP.

REQUEST FOR PUBLIC COMMENT. The public comment period for the rule will be held Monday, December 20, 2021, to Monday, January 10, 2022, to receive input on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, MONDAY, JANUARY 10, 2022.

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

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

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (TDHCA or the Department) adopts by reference the 2022 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2022 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2022 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

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 December 13, 2021.

TRD-202105008
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 463-7961

CHAPTER 27. TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 27, First Time Homebuyer Program Rule, §§27.1 - 27.9. The purpose of the proposed repeal is to allow the Department to make forgivable second mortgage loans for down payment assistance through the FTHB Program.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to minimally expand the pool of households eligible to participate in the Project Access program.

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

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the changed sections would be the expanded pool of households that may be eligible for a Project Access voucher and the acceleration of a household's possible exit from an institution into the community. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 24, 2021, to January 24, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Monica Galuski, P.O. Box 13941, Austin, Texas 78711-3941 or email monica.galuski@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, January 24, 2022.

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

Except as described herein the proposed amended sections affect no other code, article, or statute.

§27.1. Purpose.

§27.2. Definitions.

§27.3. Restrictions on Residences Financed and Applicant.

§27.4. Occupancy and Use Requirements.

§27.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

§27.6. Criteria for Approving Participating Mortgage Lenders.

§27.7. Resale of the Residence.

§27.8. Conflicts with Bond Indentures and Applicable Law.

§27.9. Waiver.

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 December 13, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 936-9268

10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 27, First Time Homebuyer Program Rule. The purpose of the proposed rule is to facilitate the inclusion of forgivable second mortgage loans for down payment assistance through the FTHB Program.

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

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new section would be in effect:

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Project Access program.

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

3. The new section does not require additional future legislative appropriations.

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

5. The new section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will not expand, limit, or repeal an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rules' applicability.

8. The new section will not negatively or positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would expanding the pool of households that may be eligible for a Project Access voucher and facilitating a household's more rapid exit from an institution into the community. There will not be economic costs to individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 24, 2021, to January 24, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Monica Galuski, P.O. Box 13941, Austin, Texas 78711-3941 or email monica.galuski@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, January 24, 2022.

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

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

§27.1. Purpose.

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family Mortgage Loans for eligible first time Homebuyers, and to make available down payment and closing cost assistance to eligible Homebuyers. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§27.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Contract for Deed Exception--The exception for certain Mortgage Loan eligibility requirements, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each Applicant must separately meet this three year requirement.

(9) Homebuyer--An Applicant that is approved by the Program and purchases a Residence.

(10) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(11) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

(12) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(13) Program--The Texas First Time Homebuyer Program.

(14) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(15) Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a First Time Homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a First Time Homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds, and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(16) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(17) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

(18) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(19) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, or an Area of Chronic Economic Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(20) Targeted area exemption to First time Homebuyer Requirement--Applicants purchasing homes in targeted areas financed through the program are exempt from the requirement to be a First Time Homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

(21) United States Department of Veterans Affairs--Also known as VA.

§27.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a Residence that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

§27.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Homebuyer must occupy the property within a reasonable time (not to exceed 60 days) after the date of closing as his or her Residence.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Homebuyer may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Homebuyer's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Homebuyer's control.

§27.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA , RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

§27.6. Criteria for Approving Participating Mortgage Lenders.

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

§27.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§27.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§27.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8 of this chapter, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306.

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 December 13, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 936-9268

CHAPTER 28. TAXABLE MORTGAGE PROGRAM

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 28, Taxable Mortgage Program, §§28.1 - 28.9. The purpose of the proposed repeal is to facilitate the inclusion of forgivable second mortgage loans for down payment assistance, and to remove purchase price limits for the TMP Program.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to minimally expand the pool of households eligible to participate in the Project Access program.

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

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the changed sections would be the expanded pool of households that may be eligible for a Project Access voucher and the acceleration of a household's possible exit from an institution into the community. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 24, 2021, to January 24, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Monica Galuski, P.O. Box 13941, Austin, Texas 78711-3941 or email monica.galuski@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, January 24, 2022.

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

Except as described herein the proposed amended sections affect no other code, article, or statute.

§28.1. Purpose.
§28.2. Definitions.
§28.3. Restrictions on Residences Financed and Applicant.
§28.4. Occupancy and Use Requirements.
§28.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.
§28.6. Criteria for Approving Participating Mortgage Lenders.
§28.7. Resale of the Residence.
§28.8. Conflicts with Bond Indentures and Applicable Law.
§28.9. Waiver.

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

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Bobby Wilkinson
Executive Director
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For further information, please call: (512) 936-9268

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 28, Taxable Mortgage Program, §§28.1 - 28.9. The purpose of the proposed rule is to facilitate the inclusion of forgivable second mortgage loans for down payment assistance, and to remove purchase price limits for the TMP Program.

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

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new section would be in effect:

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Project Access program.

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

3. The new section does not require additional future legislative appropriations.

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

5. The new section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will not expand, limit, or repeal an existing regulation.

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

8. The new section will not negatively or positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the new section would expanding the pool of households that may be eligible for a Project Access voucher and facilitating a household's more rapid exit from an institution into the community. There will not be economic costs to individuals required to comply with the new sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held December 24, 2021, to January 24, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Monica Galuski, P.O. Box 13941, Austin, Texas 78711-3941 or email monica.galuski@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, January 24, 2022.

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

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

§28.1. Purpose.

(a) The purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing Mortgage Loans for eligible Homebuyers and in both cases to make down payment and closing cost assistance available to eligible Homebuyers. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§28.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Code--The Internal Revenue Code of 1986, as amended from time to time.

(5) Department Designated Areas of Special Need--Geographic areas designated by the Department from time to time as areas of special need.

(6) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(7) Homebuyer--An Applicant that is approved by the Program and purchases a Residence.

(8) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(9) Mortgage Lender--The entity, as defined in §2306.004 of the Texas Government Code, participating in the Program and signatory to the Master Mortgage Origination Agreement.

(10) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(11) Program--The Taxable Mortgage Program.

(12) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(13) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. Has the same meaning as Home in Chapter 2306 of the Texas Government Code.

(14) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(15) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, or an Area of Chronic Economic Distress, or a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(16) United States Department of Veterans Affairs--Also known as VA.

§28.3. Restrictions on Residences Financed and Applicant.

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a Residence that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Mortgage Lender.

§28.4. Occupancy and Use Requirements.

(a) Occupancy requirement. The Homebuyer must occupy the property within a reasonable time (not to exceed 60 days) after the date of closing as his or her Residence.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Homebuyer may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Homebuyer's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Homebuyer's control.

§28.5. Application Procedure and Requirements for Commitments by Mortgage Lenders.

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

§28.6. Criteria for Approving Participating Mortgage Lenders.

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

§28.7. Resale of the Residence.

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§28.8. Conflicts with Bond Indentures and Applicable Law.

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§28.9. Waiver.

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §28.8 of this chapter, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.

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

Filed with the Office of the Secretary of State on December 13, 2021.

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Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 936-9268

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER C. DISPOSITION OF COMPLAINTS

22 TAC §107.204

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.204, concerning the issuance of remedial plans to resolve the investigation of a complaint. The proposed amendment establishes when multiple remedial plans may be issued to a licensee and when a remedial plan may be removed from the Board's public website. The rule is proposed in accordance with Senate Bill 1534 of the 87th Texas Legislature, Regular Session (2021), and Chapter 263, Texas Occupations Code.

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

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

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

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

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

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

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

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

This proposed rule implements Section 263.0077 of the Texas Occupations Code.

§107.204. Remedial Plans.

(a) The board may issue and establish the terms of a non-disciplinary remedial plan to resolve the investigation of a complaint.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

(C) a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has [~~previously~~] entered into a remedial plan with the board in the preceding five years [~~for the resolution of a different complaint~~].

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) A remedial plan is public information.

(g) For all remedial plans issued on or after September 1, 2021, on or after the fifth anniversary of the date a remedial plan is issued under this section, the board may remove from the board's public Internet website any public information regarding the dentist or dental hygienist with respect to the plan and the complaint resolved by the plan, unless:

(1) the complaint was related to the delivery of health care; or

(2) more than one remedial plan has been issued to resolve complaints alleging the same violation by the dentist or dental hygienist, including a complaint not related to the delivery of health care.

(h) To request the removal of a remedial plan under subsection (g) of this section, a dentist or dental hygienist must submit a request in writing to the General Counsel of the board. The request must include:

(1) the specific case number of which removal is requested; and

(2) proof that the dentist or dental hygienist complied with and successfully completed the terms of the remedial plan of which removal is requested.

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 December 10, 2021.

TRD-202104984
Lauren Studdard
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 305-8910

PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

The Texas Board of Nursing (Board) proposes amendments to §223.1, relating to Fees. The amendments are being proposed under the authority of the Occupations Code §301.151 and §301.155.

Background. The General Appropriations Act, 87th Regular Legislative Session, passed a budget for the Board for the 2022 - 2023 biennium. Specifically, in Article VIII, Section 2, it limits the Board appropriation to revenue collections. The Board anticipates a revenue surplus for the 2022 - 2023 biennium and proposes to reduce fees to limit revenue collection to align with the approved budget. The proposed amendment is necessary to meet the budgetary requirements of the legislature.

Section by Section Overview. Proposed amended §223.1(a)(1) decreases the examination fee for vocational and registered nurse applicants from $75 to $50.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there will be a reduction in the revenue to state government as a result of the enforcement or administration of the proposal. The proposed amendment will decrease the examination fee for vocational and registered nurse applicants from $75 to $50. Based upon processing approximately 25,000 examination applications per fiscal year and reducing the corresponding fee by $25, the Board estimates this will result in an approximate $625,000 annual decrease in revenue to state government.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of rules that meet the budgetary requirements of the legislature. There are no anticipated costs of compliance with the proposal. The proposal only affects applicants that apply for licensure by examination. For these applicants, the proposal will result in a cost savings based on a reduction in the examination fee from $75 to $50.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary for consistency with the budgetary requirements of the legislature.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendment will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal reduces the amount of examination fees paid to the Board in order to meet budgetary requirements; (v) the proposal amends an existing regulation by reducing examination fees paid to the Board; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to Mark Majek, Director of Operations, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Mark.Majek@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If

a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the authority of the Occupations Code §301.151 and §301.155.

Section 301.151 addresses the Board's rulemaking authority. Section 301.155 addresses the authority of the Board to establish fees.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.155.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

(1) Examination: $50 [~~$75~~];

(2) - (21) (No change.)

(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 December 24, 2021.

TRD-202105028
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 305-6822

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4

The Texas State Board of Pharmacy proposes amendments to §283.4, concerning Internship Requirements. The amendments, if adopted, specify that a person may not have previously failed the NAPLEX or Texas Pharmacy Jurisprudence Examination to be designated an extended-intern as a resident in a residency program accredited by the American Society of Health-System Pharmacists and correct grammatical errors.

Timothy L. Tucker, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Tucker has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear and grammatically correct regulations that accurately reflect the requirements to be designated an extended-intern. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Tucker 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 the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation by restricting one method of eligibility to be designated an extended-intern;

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

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

Written comments on the amendments may be submitted to Eamon D. Briggs, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24, 2022.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§283.4. Internship Requirements.

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmacist-delivered patient care to a diverse patient population and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection:

(A) Provides drug products. The pharmacist-intern shall demonstrate competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and [~~and/or~~] patients' agents about prescription drugs. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and [~~, and/or the~~] patients' agents[~~,~~] on drug usage, dosage, packaging, routes of administration, intended drug use, and storage; discussing drug cautions, adverse effects, and patient conditions; explaining policies on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and [~~and/or~~] patients' agents about nonprescription products, devices, dietary supplements, diet, nutrition, traditional nondrug therapies, complementary and alternative therapies, and diagnostic aids. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and [~~and/or~~] patients' agents on conditions, intended drug use, and adverse effects; assisting in and recommending drug selection; triaging and assessing the need for treatment or referral, including referral for a patient seeking pharmacist-guided self-care; providing information on medical/surgical devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with healthcare professionals, [~~and~~] patients, and [~~and/or~~] patients' agents. The pharmacist-intern shall demonstrate competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Practices as a member of the patient's interdisciplinary healthcare team. The pharmacist-intern shall demonstrate competence in collaborating with physicians, other healthcare professionals, patients, and [~~and/or~~] patients' agents to formulate a therapeutic plan. The pharmacist-intern shall demonstrate competence in establishing and interpreting databases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs, monitoring and evaluating patient outcomes, and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; to apply professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall demonstrate competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded non-sterile and sterile preparations; and documenting calculations and procedures. Pharmacist-interns engaged in compounding non-sterile preparations shall meet the training requirements for pharmacists specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations). Pharmacist-interns engaged in compounding sterile preparations shall meet the training requirements for pharmacists specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(H) Retrieves and evaluates drug information. The pharmacist-intern shall demonstrate competence in retrieving, evaluating, managing, and using the best available clinical and scientific publications for answering a drug-related request in a timely fashion and assessing, evaluating, and applying evidence based information to promote optimal health care. The pharmacist-intern shall perform investigations on relevant topics in order to promote inquiry and problem-solving with dissemination of findings to the healthcare community and [~~and/or~~] the public.

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning, personnel and fiscal management, leadership skills, and policy development. The pharmacist-intern shall have an understanding of drug security, storage and control procedures and the regulatory requirements associated with these procedures, and maintaining quality assurance and performance improvement. The pharmacist-intern shall observe and document discrepancies and irregularities, keep accurate records, and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Participates in public health, community service or professional activities. The pharmacist-intern shall develop basic knowledge and skills needed to become an effective healthcare educator and a responsible participant in civic and professional organizations.

(K) Demonstrates scientific inquiry. The pharmacist-intern shall develop skills to expand and [~~and/or~~] refine knowledge in the areas of pharmaceutical and medical sciences or pharmaceutical services. This may include data analysis of scientific, clinical, sociological, or [~~and/or~~] economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and [~~and/or~~] the public.

(b) Hours requirement.

(1) The board requires the number of hours of internship required by ACPE for licensure. These hours may be obtained through one or more of the following methods:

(A) in a board-approved [~~board approved~~] student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program, as specified in subsection (d) of this section; [~~and/or~~]

(C) graduation from a college/school of pharmacy after July 1, 2007. Persons graduating from such programs shall be credited the required number of hours or the number of hours actually obtained and reported by the college; or [~~and/or~~]

(D) internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number;

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application;

(ii) is enrolled in the professional sequence of a college/school of pharmacy; and

(iii) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires if:

(i) the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of pharmacy;

(ii) the student-intern fails either the NAPLEX or Texas Pharmacy Jurisprudence Examination [~~Examinations~~] specified in this section; or

(iii) the student-intern fails to take either the NAPLEX or Texas Pharmacy Jurisprudence Examination [~~Examinations~~] or both within six calendar months after graduation.

(B) The executive director of the board, in his/her discretion, may extend the term of the student internship if administration of the NAPLEX or Texas Pharmacy Jurisprudence Examination [~~Examinations~~] is suspended or delayed.

(3) Texas colleges/schools of pharmacy internship programs.

(A) Student-interns completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. No credit shall be awarded for didactic experience.

(B) No more than 600 hours of the required number of hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has met one of the following requirements:

(A) passed the NAPLEX and [~~the~~] Texas Pharmacy Jurisprudence Examination [~~Examinations~~] but lacks the required number of internship hours for licensure;

(B) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examination [~~Examinations~~] within six calendar months after graduation and has:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy.

(C) applied to the board to take the NAPLEX and Texas Pharmacy Jurisprudence Examination [~~Examinations~~] within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure;

(E) is a resident in a residency program accredited by the American Society of Health-System Pharmacists in the state of Texas and has not previously failed the NAPLEX or Texas Pharmacy Jurisprudence Examination; or

(F) been ordered by the Board to complete an internship.

(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must:

(A) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number; and

(iii) any other information requested on the application; and

(B) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor.

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon:

(A) the failure of the extended-intern to take the NAPLEX and Texas Pharmacy Jurisprudence Examination [~~Examinations~~] within six calendar months after graduation or FPGEC certification;

(B) the failure of the extended-intern to pass the NAPLEX and Texas Pharmacy Jurisprudence Examination [~~Examinations~~] specified in this section;

(C) termination of the residency program; or

(D) obtaining a Texas pharmacist license.

(5) The executive director of the board, in his/her discretion, may extend the term of the extended internship if administration of the NAPLEX or [~~and/or~~] Texas Pharmacy Jurisprudence Examination [~~Examinations~~] is suspended or delayed.

(6) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the required number of hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

(1) Pharmacist-interns shall keep documentation of designation as a pharmacist-intern with them at all times they are serving as a pharmacist-intern and make it available for inspection by board agents.

(2) All pharmacist-interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist-intern.

(f) Change of address or [~~and/or~~] name.

(1) Change of address. A pharmacist-intern shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address.

(2) Change of name. A pharmacist-intern shall notify the board in writing within 10 days of a change of name by sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree[~~, etc.~~]).

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 December 9, 2021.

TRD-202104951
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 305-8010

CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.29

The Texas State Board of Pharmacy proposes amendments to §291.29, concerning Professional Responsibility of Pharmacists. The amendments, if adopted, establish the determination of a valid prescription issued as a result of teledentistry dental services, in accordance with House Bill 2056, or telemedicine medical services.

Timothy L. Tucker, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Tucker has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency with state law and to ensure that pharmacists are dispensing controlled substances and dangerous drugs pursuant only to valid prescriptions. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Tucker 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 the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do expand an existing regulation in order to be consistent with state law;

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

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

Written comments on the amendments may be submitted to Eamon D. Briggs, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24, 2022.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.29. Professional Responsibility of Pharmacists.

(a) A pharmacist shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order dispensed. If the pharmacist questions the accuracy or authenticity of a prescription drug order, the pharmacist shall verify the order with the practitioner prior to dispensing.

(b) A pharmacist shall make every reasonable effort to ensure that any prescription drug order, regardless of the means of transmission, has been issued for a legitimate medical purpose by a practitioner in the course of medical practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the order for such drug was issued without a valid pre-existing patient-practitioner relationship as defined by the Texas Medical Board in 22 Texas Administrative Code (TAC) §190.8 (relating to Violation Guidelines) or without a valid prescription drug order.

(1) A prescription drug order may not be dispensed or delivered by means of the Internet unless pursuant to a valid prescription that was issued for a legitimate medical purpose in the course of medical practice by a practitioner, or practitioner covering for another practitioner.

(2) A prescription drug order may not be dispensed or delivered if the pharmacist has reason to suspect that the prescription drug order may have been authorized in the absence of a valid patient-practitioner relationship, or otherwise in violation of the practitioner's standard of practice to include that the practitioner:

(A) did not establish a diagnosis through the use of acceptable medical practices for the treatment of patient's condition;

(B) prescribed prescription drugs that were not necessary for the patient due to a lack of a valid medical need or the lack of a therapeutic purpose for the prescription drugs; or

(C) issued the prescriptions outside the usual course of medical practice.

(3) Notwithstanding the provisions of this subsection and as authorized by the Texas Medical Board in 22 TAC §190.8, a pharmacist may dispense a prescription when a physician has not established a professional relationship with a patient if the prescription is for medications for:

(A) sexually transmitted diseases for partners of the physician's established patient; or

(B) a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic.

(c) If a pharmacist has reasons to suspect that a prescription was authorized solely based on the results of a questionnaire and/or in the absence of a documented patient evaluation including a physical examination, the pharmacist shall ascertain if that practitioner's standard of practice allows that practitioner to authorize a prescription under such circumstances. Reasons to suspect that a prescription may have been authorized in the absence of a valid patient-practitioner relationship or in violation of the practitioner's standard of practice include:

(1) the number of prescriptions authorized on a daily basis by the practitioner;

(2) a disproportionate number of patients of the practitioner receive controlled substances;

(3) the manner in which the prescriptions are authorized by the practitioner or received by the pharmacy;

(4) the geographical distance between the practitioner and the patient or between the pharmacy and the patient;

(5) knowledge by the pharmacist that the prescription was issued solely based on answers to a questionnaire;

(6) knowledge by the pharmacist that the pharmacy he/she works for directly or indirectly participates in or is otherwise associated with an Internet site that markets prescription drugs to the public without requiring the patient to provide a valid prescription order from the patients practitioner; or

(7) knowledge by the pharmacist that the patient has exhibited doctor-shopping or pharmacy-shopping tendencies.

(d) A pharmacist shall ensure that prescription drug orders for the treatment of chronic pain have been issued in accordance with the guidelines set forth by the Texas Medical Board in 22 TAC §170.3 (relating to Guidelines), prior to dispensing or delivering such prescriptions.

(e) A prescription drug order may not be dispensed or delivered if issued by a practitioner practicing at a pain management clinic that is not in compliance with the rules of the Texas Medical Board in 22 TAC §§195.1 - 195.4 (relating to Pain Management Clinics). A prescription drug order from a practitioner practicing at a certified pain management clinic is not automatically valid and does not negate a pharmacist's responsibility to determine that the prescription is valid and has been issued for a legitimate or appropriate medical purpose.

(f) A pharmacist shall not dispense a prescription drug if the pharmacist knows or should know the prescription drug order is fraudulent or forged. A pharmacist shall make every reasonable effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions in violation of a pharmacist's corresponding responsibility. The following patterns (i.e., red flag factors) are relevant to preventing the non-therapeutic dispensing of controlled substances and shall be considered by evaluating the totality of the circumstances rather than any single factor:

(1) the pharmacy dispenses a reasonably discernible pattern of substantially identical prescriptions for the same controlled substances, potentially paired with other drugs, for numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

(2) the pharmacy operates with a reasonably discernible pattern of overall low prescription dispensing volume, maintaining relatively consistent 1:1 ratio of controlled substances to dangerous drugs and/or over-the-counter products dispensed as prescriptions;

(3) prescriptions by a prescriber presented to the pharmacy are routinely for controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants, psychostimulants, and/or cough syrups containing codeine, or any combination of these drugs;

(4) prescriptions for controlled substances by a prescriber presented to the pharmacy contain nonspecific or no diagnoses, or lack the intended use of the drug;

(5) prescriptions for controlled substances are commonly for the highest strength of the drug and/or for large quantities (e.g., monthly supply), indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

(6) dangerous drugs or over-the-counter products (e.g., multi-vitamins or laxatives) are consistently added by the prescriber to prescriptions for controlled substances presented to the pharmacy, indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

(7) upon contacting the practitioner's office regarding a controlled substance prescription, the pharmacist is unable to engage in a discussion with the actual prescribing practitioner; the practitioner fails to appropriately address based on a reasonable pharmacist standard the pharmacist's concerns regarding the practitioner's prescribing practices with regard to the prescription; and/or the practitioner is unwilling to provide additional information, such as treatment goals and/or prognosis with prescribed drug therapy;

(8) the practitioner's clinic is not registered as, and not exempted from registration as, a pain management clinic by the Texas Medical Board, despite prescriptions by the practitioner presented to the pharmacy indicating that the practitioner is mostly prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone, or any combination of these drugs;

(9) the controlled substance(s) or the quantity of the controlled substance(s) prescribed are inconsistent with the practitioner's area of medical practice;

(10) the Texas Prescription Monitoring Program indicates the person presenting the prescriptions is obtaining similar drugs from multiple practitioners, and/or that the persons is being dispensed similar drugs at multiple pharmacies;

(11) multiple persons with the same address present substantially similar controlled substance prescriptions from the same practitioner;

(12) persons consistently pay for controlled substance prescriptions with cash or cash equivalents more often than through insurance;

(13) persons presenting controlled substance prescriptions are doing so in such a manner that varies from the manner in which persons routinely seek pharmacy services (e.g., persons arriving in the same vehicle with prescriptions from same practitioner; one person seeking to pick up prescriptions for multiple others; drugs referenced by street names;

(14) the pharmacy charges and persons are willing to pay significantly more for controlled substances relative to nearby pharmacies;

(15) the pharmacy routinely orders controlled substances from more than one drug supplier;

(16) the pharmacy has been discontinued by a drug supplier related to controlled substance orders;

(17) the pharmacy has a sporadic and inconsistent dispensing volume (including zero dispensing);

(18) the pharmacy does not maintain normal operational hours each week from Monday through Friday; and

(19) the pharmacy has been previously warned or disciplined by the Texas State Board of Pharmacy for inappropriate dispensing of controlled substances.

(g) Prescriptions issued as a result of telemedicine medical services or teledentistry dental services.

(1) The validity of a prescription issued as a result of telemedicine medical services or teledentistry dental services is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(2) A valid prescription issued as a result of telemedicine medical services or teledentistry dental services must:

(A) be issued for a legitimate medical purpose by a practitioner as part of a practitioner-patient relationship as set out in Texas Occupations Code §111.005; and

(B) meet all other applicable laws before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance.

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 December 9, 2021.

TRD-202104952
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 305-8010

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments, if adopted, will extend the time period for a pharmacist to dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state to the end of the thirtieth day after the date the prescription is issued to be consistent with federal law and correct a citation reference.

Timothy L. Tucker, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Tucker has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be correct and clear regulatory language and consistency between Board rules and federal law. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Tucker 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 the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation in order to be consistent with federal law;

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

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

Written comments on the amendments may be submitted to Eamon D. Briggs, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24, 2022.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedules II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped signatures may not be used.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense prescription drug orders for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the thirtieth[~~twenty-first~~] day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedules III, IV, or V issued

by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedules III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Oral prescription drug orders.

(A) An oral prescription drug order for a controlled substance from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions orally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an oral prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance

issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order, including clarifications to the order given by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Notwithstanding subparagraph (A) of this paragraph, a pharmacist may dispense a quantity less than indicated on the original prescription drug order at the request of the patient or patient's agent.

(C) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(D) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(E) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(F) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) the name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) the address of the patient; provided, however, that a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) the name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped, and if for a controlled substance, the DEA registration number of the practitioner;

(iv) the name and strength of the drug prescribed;

(v) the quantity prescribed numerically, and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic; or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) the intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) the date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code:

(I) the name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) the address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the dispensing pharmacist;

(iii) the initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) the quantity dispensed, if different from the quantity prescribed;

(v) the date of dispensing, if different from the date of issuance; and

(vi) the brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(C) Prescription drug orders may be utilized as authorized in Title 26, Part 1, Chapter 554[~~Title 40, Part 1, Chapter 19~~] of the Texas Administrative Code.

(i) A prescription drug order is not required to bear the information specified in subparagraph (A) of this paragraph if the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital). Such prescription drug orders must contain the following information:

(I) the full name of the patient;

(II) the date of issuance;

(III) the name, strength, and dosage form of the drug prescribed;

(IV) directions for use; and

(V) the signature(s) required by 26 TAC §554.1506 (relating to Drug Orders) [~~40 TAC §19.1506~~].

(ii) Prescription drug orders for dangerous drugs shall not be dispensed following one year after the date of issuance unless the authorized prescriber renews the prescription drug order.

(iii) Controlled substances shall not be dispensed pursuant to a prescription drug order under this subparagraph.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (l) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title (relating to Operational Standards); and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or man-made disasters. If a natural or man-made disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor of Texas has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Emergency Refills of Insulin and Insulin-Related Equipment or Supplies.

(i) A pharmacist may exercise the pharmacist's professional judgment in refilling a prescription for insulin or insulin-related equipment or supplies without the authorization of the prescribing practitioner if the pharmacist:

(I) is unable to contact the practitioner after reasonable effort;

(II) is provided with documentation showing that the patient was previously prescribed insulin or insulin-related equipment or supplies by a practitioner;

(III) assesses the patient to determine whether the emergency refill is appropriate;

(IV) creates a record that documents the patient's visit that includes a notation describing the documentation provided under subclause (II) of this clause; and

(V) makes a reasonable attempt to inform the practitioner of the emergency refill at the earliest reasonable time.

(ii) The quantity of an emergency refill of insulin may not exceed a 30-day supply. The quantity of an emergency refill of insulin-related equipment or supplies may not exceed the lesser of a 30-day supply or the smallest available package.

(G) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program:

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patient or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and Schedules IV and V controlled substances. Schedules II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a reg-

ular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign or electronically sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records, for ensuring that such data processing system can produce the records outlined in this section, and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensing (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide online retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy using a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded, or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for online data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(1) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile:

(A) directly by a pharmacist or pharmacist-intern to another pharmacist or pharmacist-intern for prescription drug order information for controlled substances; or

(B) directly by a pharmacist, pharmacist-intern, or pharmacy technician to another pharmacist, pharmacist-intern, or pharmacy technician for prescription drug order information for dangerous drugs.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, and if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, the name, address, DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or indicate in the prescription record that the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section, and the following:

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining, and if a controlled substance, the date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section, and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided, however, that during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone;

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes;

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order;

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred; and

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met:

(i) The original prescription is voided and the pharmacies' data processing systems store all the information as specified in paragraphs (5) and (6) of this subsection;

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records; and

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation, including the formula, unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) A pharmacy shall comply with 21 CFR 1305 regarding the DEA order form (DEA 222) requirements when distributing a Schedule II controlled substance.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee who is involved in the dispensing process, in the pharmacy's data processing system (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled substances listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(3) suppliers' credit memos for controlled substances and dangerous drugs;

(4) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(5) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(6) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(7) a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to the DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories that shall be maintained at the pharmacy;

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location;

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records; and

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist, pharmacist-intern, or pharmacy technician consults a prescriber as described in this section, the individual shall document such occurrences on the hard copy or in the pharmacy's data processing system associated with the prescription and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist, pharmacist-intern, or pharmacy technician performing the consultation clearly recorded for the purpose of identifying the individual who performed the consultation if the information is recorded on the hard copy prescription.

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 December 9, 2021.

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Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 305-8010

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.52

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.52, concerning Veterinarian Patient Record Keeping.

The purpose of the proposed amendment is to clarify what information is required for complete medical records.

Fiscal Note

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that licensees will have better clarity about the requirements of medical records and that the public will receive better medical records as a result.

Local Employment Impact Statement

Mr. Helenberg has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Helenberg has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase or decrease in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *Valerie.mitchell@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

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

§573.52. Veterinarian Patient Record Keeping.

(a) Individual records shall be maintained at the veterinarian's place of business, shall be complete, contemporaneous and legible and shall include, but are not limited to:

(1) name, address, and phone number of the client;

(2) identification of patient, including name, species, breed, age, sex, and description;

(3) patient history;

(4) dates of visits;

(5) any immunization records;

(6) weight if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;

(7) vital signs, including temperature, pulse and respiration rate, if required for diagnosis or treatment (if treating a herd, flock or individual animal where the vital sign(s) cannot be safely or practically obtained, then the reason for not obtaining the vital sign(s) should be noted instead) [~~temperature if required for diagnosis or treatment except when treating a herd, flock, or a species, or an individual animal that is difficult to obtain a temperature~~];

(8) any laboratory analysis;

(9) any diagnostic images or written summary of results if unable to save image;

(10) differential diagnosis and/or treatment plan, if applicable;

(11) names, dosages, concentration, sites, and routes of administration of each drug prescribed, administered and/or dispensed. If a drug is approved by the United States Food and Drug Administration (FDA) in only one concentration and the veterinarian is administering the FDA-approved drug at the FDA-approved concentration, the veterinarian may omit recording the concentration of the drug administered;

(12) other details necessary to substantiate or document the examination, diagnosis, and treatment provided, and/or surgical procedure performed, including surgical procedure details, anesthesia records, monitoring and support, and pre- and post-operative care;

(13) any signed acknowledgment required by §§573.14, 573.16, 573.17, and 573.18 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation, Alternate Therapies--Acupuncture, Alternate Therapies--Holistic Medicine, and Alternate Therapies--Homeopathy);

(14) the identity of the veterinarian who performed or supervised the procedure recorded;

(15) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction;

(16) the date and substance of any referral recommendations, with reference to the response of the client;

(17) the date and substance of any consultation concerning a case with a specialist or other more qualified veterinarian; and

(18) copies of any official health documents issued for the animal.

(b) - (c) (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 December 13, 2021.

TRD-202105040
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 693-4500

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.75

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.75, concerning Duty to Cooperate with the Board.

The purpose of the proposed amendment is to clarify the requirements for cooperating with a Board inspection or investigations to help ensure an efficient use of the agency's resources.

Fiscal Note

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be a more timely resolution of the inspection, investigation or complaint for all parties involved because the entirety of the records will be supplied earlier to the Board.

Local Employment Impact Statement

Mr. Helenberg has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Helenberg has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase or decrease in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *Valerie.mitchell@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

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

§573.75. Duty to Cooperate with the Board.

A licensee shall:

(1) cooperate fully with any Board inspection or investigation; [and]

(2) submit a written response including complete medical records to the Board [respond] within twenty-one (21) days of receipt to requests for information regarding complaints and other requests for information from the Board, except where:

(A) the Board in contacting a licensee imposes a different response date; or

(B) the licensee is unable for good cause to meet the response date and requests a different response date; and [.]

(3) certify via a signature form that the submitted records or information are complete and accurate to the licensee's knowledge.

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

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John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES
SUBCHAPTER A. BOARD MEMBERS AND MEETINGS--DUTIES
22 TAC §577.5

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §577.5, concerning Committees of the Board.

The purpose of the proposed amendment is to add a standing Rules Committee to the Board's structure to assist in the streamlining and updating of the Board's Rules of Professional Conduct.

Fiscal Note

John Helenberg, Executive Director, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Helenberg has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Helenberg has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that licensees will have better clarity about the agency's procedures and practice requirements. Mr. Helenberg expects that more comprehensible rules will lead to greater compliance by licensees and thus serve to better protect the public.

Local Employment Impact Statement

Mr. Helenberg has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Helenberg has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Helenberg has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase or decrease in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to *Valerie.mitchell@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules as necessary to administer this chapter. The rule is also proposed under the authority of §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

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

§577.5. Committees of the Board.

(a) Standing and Permanent Committees. The following are standing and permanent committees of the Board, established pursuant to Occupations Code, Chapter 801. The responsibilities and authority of these committees include those duties and powers set forth below and any other responsibilities delegated by the Board.

(1) Executive Committee.

(A) Membership. The Executive Committee shall be comprised of the Board president, vice president, and secretary. The Board president shall annually appoint members of the Board to serve as the Board vice president and secretary. The Board president shall serve as the chair of the Executive Committee.

(B) Responsibilities and Authority. The Executive Committee shall have the responsibility and authority to:

(i) study and make recommendations to the Board regarding future Board goals and objectives and the establishment of priorities;

(ii) study and make recommendations to the Board regarding methods to improve the efficiency and effectiveness of the administration of the Board;

(iii) review and evaluate Board rules regarding the Board's general administrative duties, or any Board function the committee determines needs consideration, study and recommend changes and additions to such rules;

(iv) assist in the preparation and presentation of information concerning the Board to the Legislature and other state officials;

(v) take action on matters of urgency that arise between Board meetings;

(vi) conduct temporary license suspension proceedings pursuant to Occupations Code §801.409 and §575.35 of this title;

(vii) study and make recommendations to the Board regarding the division of responsibilities between the Board and Board staff pursuant to Occupations Code §801.104;

(viii) conduct an annual performance evaluation of the Executive Director, report findings and make employment recommendations to the Board; and

(ix) in the event of a vacancy in the Executive Director position, oversee the hiring process, conduct interviews, and make employment recommendations to the Board.

(2) Enforcement Committee.

(A) Membership. The Enforcement Committee shall be comprised of two veterinary Board members and the Board's three public members. The Board president shall annually appoint members of the Board to serve on the Enforcement Committee. The Board president shall appoint the chair of the Enforcement Committee.

(B) Responsibilities and Authority. The Enforcement Committee shall have the responsibility and authority to:

(i) oversee the Board's enforcement and disciplinary process;

(ii) study and make recommendations to the Board regarding future enforcement goals and objectives and the establishment of enforcement priorities;

(iii) study and make recommendations to the Board regarding methods to improve the efficiency and effectiveness of the administration of the Board's enforcement and disciplinary process;

(iv) review and evaluate Board rules regarding the enforcement and disciplinary process, study and recommend changes and additions to such rules;

(v) conduct informal conferences pursuant to Occupations Code §801.408 and §575.29 of this title;

(vi) conduct proceedings related to requests for reinstatement of a license pursuant to §575.22 of this title; and

(vii) conduct proceedings related to requests for modification and termination of agreed orders and disciplinary orders pursuant to §575.38 of this title.

(3) Licensing Committee.

(A) Membership. The Licensing Committee shall be comprised of one veterinary Board member, the Board's LVT member, and one public Board member. The Board president shall annually appoint members of the Board to serve on the Licensing Committee. The Board president shall appoint the chair of the Licensing Committee.

(B) Responsibilities and Authority. The Licensing Committee shall have the responsibility and authority to:

(i) oversee the Board's licensing process;

(ii) study and make recommendations to the Board regarding future licensing goals and objectives and the establishment of licensing priorities;

(iii) study and make recommendations to the Board regarding methods to improve the efficiency and effectiveness of the administration of the Board's licensing process;

(iv) review and evaluate Board rules regarding the licensing process, study and recommend changes and additions to such rules;

(v) in coordination with the Finance Committee, review and evaluate Board rules regarding the Board's fee schedule, study and recommend changes and additions to such rules;

(vi) approve acceptable methods of earning continuing education hours pursuant to §573.65 of this title;

(vii) conduct proceedings relating to licensure eligibility pursuant to §575.20 of this title;

(viii) review and evaluate examinations administered by the Board and recommend changes to examination questions and administration; and

(ix) maintain communication with Texas veterinary schools, Veterinary Technician Programs, and EDP certifications programs.

(4) Finance Committee.

(A) Membership. The Finance Committee shall be comprised of three Board members, with at least one veterinary Board member and one non-veterinary Board member. The Board president shall annually appoint members of the Board to serve on the Finance Committee. The Board president shall appoint the chair of the Finance Committee.

(B) Responsibilities and Authority. The Finance Committee shall have the responsibility and authority to:

(i) oversee the Board's budget and finances;

(ii) study and make recommendations to the Board regarding future budget and finance goals and objectives and the establishment of budget and finance priorities;

(iii) study and make recommendations to the Board regarding methods to improve the efficiency and effectiveness of the administration of the Board's budget and finances;

(iv) review staff reports regarding the Board's budget and finances;

(v) in coordination with the Licensing Committee, review and evaluate Board rules regarding the Board's fee schedule, study and recommend changes and additions to such rules; and

(vi) assist in the preparation and presentation of information concerning the Board's budget and finances to the Legislature and other state officials.

(5) Rules Committee.

(A) Membership. The Rules Committee shall be comprised of three Board members, with at least one veterinary Board member and one non-veterinary Board member. The Board president shall annually appoint members of the Board to serve on the Rules Committee. The Board president shall appoint the chair of the Rules Committee.

(B) Responsibilities and Authority. The Rules Committee shall have the responsibility and authority to:

(i) review the Board's Rules and make recommendations and proposals to the full Board for any needed and necessary changes;

(ii) ensure compliance of the Board's Rules with state statutes and other applicable laws;

(iii) study the relevant rules in other jurisdictions to make recommendations to the Board; and

(iv) review any recommendations for changes to the Board's rules proposed by other Board members.

(b) - (c) (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 December 13, 2021.

TRD-202105042
John Helenberg
Executive Director
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 693-4500

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 561. EMPLOYEE MISCONDUCT REGISTRY

26 TAC §§561.1 - 561.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Chapter 561 in Title 26, Part 1, of the Texas Administrative Code (TAC), concerning Employee Misconduct Registry. The new chapter consists of §§561.1 - 561.9.

BACKGROUND AND PURPOSE

The purpose of this proposal is to update and relocate the Employee Misconduct Registry (EMR) rules from 40 TAC Chapter 93 to 26 TAC Chapter 561. The relocation of the rules is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Aging and Disability Services (DADS) to HHSC, effective September 1, 2017. The repeal is proposed elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

These proposed new rules contain language that is substantially the same as the language of the rules they are replacing. The proposed rules update HHSC agency and organizational definitions, references, and authority to reflect the transfer of functions from DADS to HHSC. The proposed new rules also revise the notice provisions for reportable conduct to conform to statutory requirements and revise the informal review process to provide for Regulatory Services Division central office staff to conduct or participate in the informal review process and in the decision-making process. Citations are updated to reflect the transition from Title 40 to Title 26.

Proposed new §561.1, Purpose, describes the purpose of the EMR, which is to implement Texas Health and Safety Code Chapter 253, Employee Misconduct Registry.

Proposed new §561.2, Definitions, provides definitions of key terms and phrases used in the chapter.

Proposed new §561.3, Employment and Registry Information, describes the criteria used to determine eligibility for employment, verification requirements, and other EMR requirements.

Proposed new §561.4, Investigations, describes the criteria for investigations of certain allegations of abuse, neglect, and exploitation against an employee, relating to reportable conduct and EMR.

Proposed new §561.5, Preliminary Results of Investigation and Notice to Employee, describes the process when the preliminary results of an investigation indicate that an employee might have committed reportable conduct; the required content of notice to the employee; the employee's dispute right through the informal review process; the dispute deadline; and notice that engaging in the informal review process does not relieve an employee from complying with requirements relating to a reportable conduct finding should HHSC uphold the preliminary results.

Proposed new §561.6, Informal Review, describes the informal review process once an employee makes a timely request.

Proposed new §561.7 Reportable Conduct Finding and Notice and Opportunity for Administrative Hearing, describes the requirements once HHSC makes a reportable conduct finding; content of the notice of reportable conduct, including the employee's right to an administrative hearing; the hearing process; proposal for decision; and entry into EMR.

Proposed new §561.8, Entering Information in the EMR, describes the process for entering information about a person into the EMR.

Proposed new §561.9, Removing Information from the EMR, describes the circumstances and process by which information about a person is removed from the EMR.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand or limit existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply as they will not be required to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed new rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the proposed new rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and they do not impose costs regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the new rules are in effect, the public benefit will be updated rules, which will provide more clarity and transparency to the public regarding the EMR and the EMR process and a more efficient implementation of statutory authority.

Trey Wood has also determined that for the first five years the new rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed new rules as there is no requirement to alter current business practices and the proposed rules do not impose any additional fees costs on those required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Laura Gutierrez, Senior Policy Specialist, P.O. Box 149030, Mail Code E-370, Austin, Texas 78714-9030; or by email to HHSCLTCR-Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 19R045" in the subject line.

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Health and Safety Code Chapter 253, specifically §253.007, Employee Misconduct Registry, which requires HHSC to establish an employee misconduct registry and establish certain rules to implement the chapter.

The new rules affect Texas Health and Safety Code Chapter 253.

§561.1. Purpose.

(a) This chapter implements Texas Health and Safety Code (THSC), Chapter 253, Employee Misconduct Registry (EMR), regarding investigating an allegation of abuse, neglect, or exploitation, and entering information in the EMR about a finding of reportable conduct by an unlicensed employee of a facility, an agency, or an individual employer.

(b) The Texas Health and Human Services Commission maintains the EMR and enters information in the EMR in accordance with §561.8 of this chapter (relating to Entering Information in the EMR).

(c) The EMR lists persons who are not employable by a facility, agency, or individual employer.

§561.2. Definitions.

The following words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Is defined by the statute or rule that governs the investigation of alleged abuse of an individual using the CDS option or receiving facility or agency services.

(2) Administrative law judge--An administrative law judge from the Texas State Office of Administrative Hearings (SOAH) who is authorized to preside over certain administrative hearings under this chapter and in accordance with Texas Government Code, Chapter 2001.

(3) Administrative hearing--A contested case hearing conducted under this chapter by SOAH based on a written request for hearing by an employee contesting the Texas Health and Human Services Commission's (HHSC's) determination that the employee committed reportable conduct.

(4) Agency--In this chapter means:

(A) a home and community support services agency licensed under Texas Health and Safety Code (THSC) Chapter 142, that provides services to an elderly or disabled adult;

(B) a person exempt from licensing under THSC §142.003(a)(19);

(C) a facility for persons with an intellectual disability or related conditions licensed under THSC Chapter 252;

(D) a state supported living center as defined in THSC §531.002;

(E) a local authority designated under THSC §533.035;

(F) a community center as defined in THSC §531.002;

(G) a mental health facility operated by the Texas Department of State Health Services;

(H) the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center; or

(I) a contractor of an entity described in subparagraphs (D) - (H) of this paragraph.

(5) Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(6) Consumer directed services option (CDS option)--A service delivery option, described in Texas Administrative Code, Title 40, Chapter 41 (relating to Consumer Directed Services Option), in which an individual or legally authorized representative (LAR) employs and retains service providers and directs the delivery of program services.

(7) Executive Commissioner--The executive commissioner of HHSC.

(8) Employee--A person who:

(A) works for an agency, a facility, or an individual employer;

(B) provides personal care services, active treatment, or any other personal services to an individual using the CDS option or receiving facility or agency services; and

(C) is not licensed to perform those services or is a nurse aide.

(9) Employee Misconduct Registry--The registry established in THSC Chapter 253, and available on the HHSC website.

(10) Exploitation--Is defined by the statute or rule that governs the investigation of alleged exploitation of an individual using the CDS option or receiving facility or agency services.

(11) Facility--In this chapter means:

(A) a nursing facility licensed under THSC Chapter 242;

(B) an assisted living facility licensed under THSC Chapter 247;

(C) a home and community support services agency licensed under THSC Chapter 142, that provides services to a child;

(D) a home and community support services agency licensed under THSC Chapter 142, as a hospice inpatient unit or hospice residential unit;

(E) a day activity and health services facility licensed under Texas Human Resources Code, Chapter 103;

(F) an adult foster care provider that contracts with HHSC; or

(G) a prescribed pediatric extended care center licensed under THSC, Chapter 248A.

(12) Financial management services agency (FMSA)--As defined in Texas Administrative Code, Title 40, Chapter 41 §41.103 (relating to Definitions), an entity that contracts with HHSC to provide financial management services to individuals who use the CDS option.

(13) Individual employer--An employer, as defined in Texas Administrative Code, Title 40, Chapter 41 §41.103, which is an individual or LAR who participates in the CDS option and is responsible for hiring and retaining service providers to deliver program services.

(14) Informal review (IR)--An opportunity for an employee to dispute the preliminary results of an investigation by providing HHSC with additional information, initiated by a written request by the employee.

(15) Neglect--Is defined by the statute or rule that governs the investigation of alleged neglect of an individual using the CDS option or receiving facility or agency services.

(16) Nurse Aide Registry (NAR)--The registry established in THSC §250.001(1), and available on the HHSC website.

(17) Reportable conduct--Reportable conduct, as defined in THSC §253.001, which includes:

(A) abuse or neglect that causes or may cause death or harm to an individual using the CDS option or receiving facility or agency services;

(B) sexual abuse of an individual using the CDS option or receiving facility or agency services;

(C) financial exploitation of an individual using the CDS option or receiving facility or agency services in the amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual using the CDS option or receiving facility or agency services.

(18) Texas State Office of Administrative Hearings (SOAH)--The state agency responsible for conducting certain administrative hearings for other state agencies, including HHSC.

(19) THSC--Texas Health and Safety Code.

§561.3. Employment and Registry Information.

(a) Before a facility, agency, or individual employer hires an employee, the facility, agency, individual employer, or a financial management services agency (FMSA), on behalf of the individual employer, must search the Employee Misconduct Registry (EMR) and Nurse Aide Registry (NAR) to determine if the person applying for employment is listed as unemployable on either registry.

(b) A facility, agency, or individual employer must not hire or continue to employ a person listed in the EMR or NAR as unemployable.

(c) A facility, agency, or individual employer must, within five working days after hiring an employee, provide written information to the employee explaining:

(1) that a person listed in the EMR is not employable by a facility, agency, or individual employer; and

(2) that the EMR is governed by this chapter and Texas Health and Safety Code Chapter 253.

(d) A facility, agency, individual employer, or FMSA, on behalf of an individual employer, must search the EMR and NAR annually to determine if an employee is listed on either registry as unemployable.

(e) A facility, or agency, individual employer, or FMSA, on behalf of an individual employer, must maintain a copy of the results of the searches required by subsections (a) and (d) of this section in the books and records maintained by the entity that conducted the search.

§561.4. Investigations.

(a) The Texas Health and Human Services Commission (HHSC) investigates certain allegations of abuse, neglect, and exploitation made against an employee.

(b) After commencing an investigation, if the preliminary results indicate an allegation of abuse, neglect, or exploitation by an employee might meet the definition of reportable conduct, HHSC complies with §561.5 of this chapter (relating to Preliminary Results of Investigation and Notice to Employee) and §561.6 of this chapter (relating to Informal Review).

(c) If HHSC determines that the reportable conduct occurred, after completing its investigation into an allegation of abuse, neglect,

or exploitation by an employee, HHSC provides the employee with written notice of the findings in accordance with §561.7 of this chapter (relating to Reportable Conduct Finding and Notice and Opportunity for Administrative Hearing).

(d) Sections 561.5, 561.6, and 561.7 of this chapter apply only to an investigation conducted by HHSC, as described in subsection (a) of this section.

§561.5. Preliminary Results of Investigation and Notice to Employee.

(a) When the preliminary results of the Texas Health and Human Services Commission's (HHSC) investigation indicate that an employee might have committed reportable conduct, HHSC sends the employee a written notice that includes:

(1) a brief summary of the preliminary results of the investigation and facts on which they are based;

(2) a statement that the employee may request an informal review (IR) by HHSC to dispute the preliminary results of the investigation;

(3) a statement that a request for an IR must be made in writing no later than 10 calendar days after the date the employee receives written notice of the preliminary results of the investigation; and

(4) contact information for the HHSC office where an employee must submit the request for an IR.

(b) An employee may dispute the preliminary results of the investigation by requesting an IR in writing no later than 10 calendar days after the date the employee received the written notice described in subsection (a) of this section.

(c) An employee's request for or participation in a requested IR does not relieve the employee of the requirement to comply with §561.7 of this chapter (relating to Reportable Conduct Finding and Notice and Opportunity for Administrative Hearing). If HHSC upholds the preliminary results of the investigation, HHSC will provide the employee with notice of reportable conduct in accordance with §561.7.

§561.6. Informal Review.

(a) If an employee requests an informal review (IR) in accordance with §561.5(b) of this chapter (relating to Preliminary Results of Investigation and Notice to Employee), the Texas Health and Human Services Commission (HHSC) sets an informal review (IR) date no later than 30 calendar days after the date the request is received by HHSC.

(1) The employee may dispute the preliminary results of the investigation by providing additional information to designated HHSC staff.

(2) If the designated HHSC staff does not uphold the preliminary investigation results, HHSC notifies the employee of the results of the IR and does not enter the employee's name or related information in the Employee Misconduct Registry.

(3) If designated HHSC staff upholds the preliminary investigation results and finds reportable conduct, HHSC sends written notice to the employee, as described in §561.7(a) of this chapter (relating to Reportable Conduct Finding and Notice and Opportunity for Administrative Hearing).

(b) If an employee does not timely request an IR or fails to participate in a requested IR, HHSC upholds the preliminary investigation results, finds reportable conduct occurred, and sends the employee the written notice described in §561.7(a) of this chapter, except that the notice does not include a summary of the results of an IR.

§561.7. Reportable Conduct Finding and Notice and Opportunity for Administrative Hearing.

(a) After an investigation in which HHSC finds that reportable conduct occurred, HHSC provides the employee with written notice of its findings, which includes:

(1) a summary of HHSC's Reportable Conduct finding;

(2) a statement that the employee has the right to an administrative hearing on the occurrence of reportable conduct;

(3) a statement that:

(A) a request for hearing must be made in writing no later than 30 calendar days after the date the employee receives the written notice; or

(B) the employee may accept the reportable conduct finding, which would result in HHSC placing the employee on the EMR; and

(4) the contact information for the Texas Health and Human Services Commission (HHSC) where the employee must submit the request for an administrative hearing.

(b) If the employee accepts HHCS's determination or does not timely request an administrative hearing, the employee's name and related information are entered in the Employee Misconduct Registry (EMR).

(c) An employee may request an administrative hearing conducted in accordance with the Health and Human Services Commission's administrative hearing procedures in Title 1, Texas Administrative Code, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(d) If an employee timely requests a hearing, the employee is granted an administrative hearing on the occurrence of reportable conduct before an administrative law judge at Texas State Office of Administrative Hearings (SOAH).

(e) The administrative hearing described in §561.7(d) requires the hearing and hearing record to be completed no later than 120 days after the date HHSC received the hearing request.

(f) The administrative law judge makes findings of facts and conclusions of law and issues a proposal for decision as to the occurrence of reportable conduct.

(g) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, HHSC by order may find that the reportable conduct occurred.

(h) If after an administrative hearing, HHSC finds that the employee committed reportable conduct under §561.7(g), HHSC must issue a final order on that determination and enter into the EMR the information described in §561.8(c) of this chapter (relating to Entering Information into the EMR.)

(i) Notice of a final order issued by HHSC under §561.7(h) must be sent to the employee and must include:

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

(2) a statement of the right of the employee to judicial review of the order; and

(3) a statement that the reportable conduct will be recorded in the EMR under Texas Health and Safety Code §253.007, if:

(A) the employee does not request judicial review of the determination; or

(B) the determination is sustained by the court.

(j) Not later than the 30th day after the date on which the decision becomes final as provided by Texas Government Code Ch. 2001, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the determination, the department will record the reportable conduct in the EMR as set forth in §561.8 of this chapter.

§561.8. Entering Information in the EMR.

(a) The Texas Health and Human Services Commission (HHSC) enters the information described in subsection (c) of this section in the Employee Misconduct Registry (EMR):

(1) when HHSC investigates and all applicable due process procedures are completed for a substantiated finding of reportable conduct;

(2) as required by Texas Health and Safety Code (THSC) §253.0075, when HHSC receives notice of a finding of reportable conduct from the Texas Department of Family and Protective Services (DFPS);

(3) as a finding of reportable conduct when HHSC finds that a nurse aide working in a nursing facility has committed abuse, neglect, or misappropriation (as those terms are defined in §561.2 of this chapter (relating to Definitions)) and HHSC lists the nurse aide's certification as revoked on the Nurse Aide Registry (NAR); or

(4) at HHSC's discretion in accordance with THSC §253.007(b), if an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct.

(b) HHSC does not offer an informal review (IR), as described in §561.6 of this chapter (relating to Informal Review), or an administrative hearing, as described in §561.7 of this chapter (relating to Reportable Conduct Finding and Notice and Opportunity for Administrative Hearing), to an employee regarding a finding of reportable conduct described in §561.8(a)(2), (3), or (4) before entering employee information related to the finding in the EMR.

(1) For a finding under subsection (a)(2) or (4) of this section, the Texas Department of Family and Protective Services, the federal government, or an agency of another state provides any due process required by its laws, rules, or regulations before sending a finding to HHSC.

(2) For a finding under subsection (a)(3) of this section, HHSC provides due process before listing a nurse aide's certification as revoked in the NAR in accordance with Title 26, Texas Administrative Code §556.12 (relating to Findings and Inquiries).

(c) The following information is entered in the EMR in accordance with THSC §253.007 (relating to Employee Misconduct Registry):

(1) the employee's name;

(2) the employee's address;

(3) the employee's social security number;

(4) the name of the facility or agency, or a notation that the employee was an employee of an individual employer;

(5) the address of the facility or agency, or the city and state of the individual employer;

(6) the date the reportable conduct occurred; and

(7) a description of the reportable conduct.

§561.9. Removing Information from the EMR.

An employee's name remains in the Employee Misconduct Registry (EMR) unless:

(1) After receiving a written request from the employee, the Texas Health and Human Services Commission (HHSC) determines that the employee does not meet the requirements for listing in the EMR based on additional information gathered by HHSC or notification received from the Texas Department of Family and Protective Services or another referring entity; or

(2) an entry of reportable conduct in the EMR was based on an entry in the Nurse Aide Registry (NAR) and the entry in the NAR is subsequently removed.

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 December 6, 2021.

TRD-202104840
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 438-3161

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§748.43, 748.105, 748.303, 748.311, 748.535, 748.721, 748.725, 748.729, 748.801, 748.831, 748.867, 748.869, 748.881, 748.882, 748.883, 748.885, 748.935, 748.937, 748.939, 748.943, 748.944, 748.947, 748.1211, 748.1217, 748.1303, 748.2009, 748.2307, 748.2507, 748.2553, 748.2651, 748.2801, 748.2953, 748.3273, 748.3301, 748.3361, 748,3421, 748.3443, 748.3601, 748.3603, 748.3757, 748.3931, and 748.4001; new §§748.511, 748.811, 748.813, 748.833, 748.863, 748.864, 748.887, 748.889, 748.911, 748.913, 748.915, 748.930, 748.931, 748.936, 748.941, 748.945, 748.1553, 748.1937, 748.2857, 748.3281, 748.3283, and 748.3363; and repeals to §§748.833, 748.863, 748.868, 748.901, 748.903, 748.931, 748.941, 748.945, 748.981, 748.983, 748.985, 748.987, 748.989, 748.1937, and 748.3363 in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Human Resources Code (HRC) §42.042(b), which requires Child Care Regulation (CCR), a division of HHSC, to conduct a comprehensive review of all minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 748. In addition, one of the proposed changes implements a section of statute added by House Bill (H.B.) 700, 87th Texas Legislature, Regular Session, 2021.

During the review of standards, CCR's goal was to balance the concerns of child advocacy groups, General Residential Oper-

ations (GROs), children, and parents to ensure that standards in Chapter 748 promote the health, safety, and welfare of children in care and meet other requirements described in HRC §42.042(e).

In preparation for the review of minimum standards, CCR conducted a web-based survey to solicit feedback from permit holders, licensed administrators, caregivers, advocates, parents, CCR staff, and the general public. The survey was available September 4 - 19, 2019. During the next step in the review, CCR held a series of nine stakeholder forums throughout the state, in February and March 2020. Additional stakeholder forums were held virtually between July 31 and August 7, 2020. During the forums, CCR presented the survey results and solicited additional input from the public about possible changes to the minimum standards CCR was considering based upon the survey results.

CCR used the input obtained through the survey, stakeholder forums, and a review of all minimum standards conducted by both regional and State Office CCR staff, as the basis of the first round of recommendations for changes to minimum standards. The recommendations were presented on January 8, 2021, to a temporary workgroup that comprised 26 invited participants, including providers from GROs and representatives from CCR, the Texas Department of Family and Protective Services (DFPS) Child Protective Services division, and the DFPS Residential Contracts division. The workgroup reviewed and provided additional comments regarding the recommendations.

CCR used all the feedback received to draft proposed changes to the rules for informal public comment. CCR received 125 comments during the informal comment period on July 12 through August 6, 2021. CCR carefully considered the comments when drafting rules for formal comment.

In addition to this consideration, this proposal also includes rules that CCR drafted to implement §264.1214(c) of Texas Family Code, which was added by H.B. 700, to allow an adult in care to share a bedroom with a child in care who is at least 16 years old and the age difference is not more than 24 months.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.43 (1) adds the terms "contract service provider," "employee," "normalcy," and "residential child-care operation," and their respective definitions for the chapter; (2) clarifies the definitions for the terms "chemical restraint," "general residential operation," "group of children," "health-care professional," "parent," "residential treatment center," "school-age child," and "seclusion"; (3) changes the term "state or local fire inspector" to "state or local fire authority" and clarifies its definition; and (4) renumbers the subsections and makes other non-substantive changes.

The proposed amendment to §748.105 (1) deletes language in subsection (3) that is repetitive; (2) clarifies that an employee must report suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline, and may not delegate this responsibility, be required to seek approval to file a report, or be required to notify the GRO that a report was made; and (3) makes non-substantive changes to improve understanding and readability.

The proposed amendment to §748.303 (1) updates the rule to require a GRO to notify CCR and the parent as soon as possible, but no later than two hours after a child's death; (2) clarifies what type of "alleged incident" involving a child and law enforcement that a GRO needs to report; (3) indicates that a GRO must notify parents as soon as possible or within 24 hours after becoming aware of a child being issued a ticket or citation without being detained; (4) renumbers several of the paragraphs in subsection (a); (5) deletes "such as a seizure" in subsection (b), so that a seizure is not used as an example to describe a medically pertinent incident that does not rise to the level of a serious incident; (6) corrects references in subsection (c) and clarifies the language regarding the documentation of unauthorized absences for children who return before the required reporting timeframe; (7) clarifies that law enforcement needs to be notified if an adult resident dies, but there are no other requirements to notify law enforcement concerning adult residents; (8) replaces "parents" with "legally authorized representative" in subsection (d); (9) clarifies in subsection (e) that the Child Care Investigations division of the Texas Department of Family and Protective Services investigates child abuse or neglect, not CCR; (10) clarifies that CCR must be notified if law enforcement executes an arrest warrant and narrows the timeframe for reporting situations described in paragraph (e)(6); (11) adds a requirement and timeframe for reporting law enforcement's execution of a search warrant at the GRO; (12) adds requirements to notify CCR and parents when there is an allegation that an employee or caregiver used a prohibited emergency behavior intervention (EBI), a prohibited restraint technique, or an EBI inappropriately as outlined in specific rules; and (13) makes non-substantive changes to improve understanding and readability.

The proposed amendment to §748.311 clarifies that any update regarding an unauthorized absence, including a child's return to the operation, must be documented in the incident report.

Proposed new §748.511 clarifies what is already required in §748.3931 by stating that an employee, contract service provider, or volunteer must not be in possession of a handgun while at the GRO or while caring for children.

The proposed amendment to §748.535 (1) adds compliance with current heightened monitoring plans, if applicable, to the list of child-care administrator responsibilities; (2) specifies that a GRO must ensure that a child is not assigned, utilized, or allowed to act as a caregiver, as opposed to the currently more general language; and (3) specifies that a GRO must ensure that persons whose behavior or health status is known to present a danger to child are not allowed at the GRO.

The proposed amendment to §748.721 clarifies that a volunteer must not be required to seek approval to report suspected abuse, neglect, or exploitation.

The proposed amendment to §748.725 (1) removes references to "sponsoring family"; and (2) removes redundant language.

The proposed amendment to §748.729 removes references to "sponsoring family."

The proposed amendment to §748.801 (1) clarifies the definition of "instructor-led training," by stating that the training does not have to be in person, and allows blended learning; (2) clarifies that "self-instructional training" includes lessons or modules that have questions with clear right and wrong answers; (3) clarifies that "self-study training" relates to annual training; and (4) makes non-substantive edits for better understanding.

Proposed new Division 2 adds new §748.811 and §748.813, relating to an Overview of Training and Experience Requirements.

Proposed new §748.811 provides a summary of the training and experience requirements for a caregiver.

Proposed new §748.813 provides a summary of the training requirements for an employee.

The proposed amendment to Division 2 renumbers the Orientation division from two to three for organizational purposes.

The proposed amendment to §748.831 adds the orientation requirement for caregivers, whereas the rule previously only required orientation for employees.

The proposed repeal of §748.833 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §748.833 with non-substantive modifications.

Proposed new §748.833 simplifies and streamlines the proposed repeal of §748.833 by refocusing the rule on when a caregiver or employee may be exempt from orientation without changing the content of the rule.

The proposed amendment to Division 3 renumbers the Pre-Service Experience and Training division from three to four for organizational purposes.

The proposed repeal of §748.863 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §748.863 and §748.864 with substantive modifications.

Proposed new §748.863 incorporates a part of the proposed repeal of §748.863 into an updated table that clarifies the pre-service training requirements for a caregiver. The new table (1) clarifies what type of pre-service training is required; (2) offers more flexibility for when a caregiver must complete the training (a caregiver must complete at least four hours of training before the caregiver may be counted in the child to caregiver ratio, and the remaining hours must be completed within 30 days of becoming a caregiver); (3) clarifies that, except for a short personal restraint, a caregiver may not administer any form of emergency behavior intervention before completing the required training if the GRO allows the use of emergency behavior intervention; (4) incorporates into the table pre-service training requirements for safe sleeping and administering psychotropic medication, which is being deleted from the proposed amendments to §748.883 and §748.885; and (5) clarifies that a caregiver may not be counted in the child to caregiver ratio unless the caregiver has completed all of the pre-service training requirements or there is a fully qualified caregiver counted in the ratio at the same time.

Proposed new §748.864 (1) incorporates a part of the proposed repeal of §748.863 into an updated table that clarifies the pre-service training requirements for an employee; and (2) simplifies when an employee must complete normalcy training (within 90 days of beginning job duties).

The proposed amendment to §748.867 (1) simplifies and streamlines this rule by refocusing the content on when a caregiver or employee is exempt for pre-service training requirements; (2) incorporates the proposed repeal of §748.868 relating to when an employee is exempt from normalcy training and extends this exemption to caregivers; and (3) clarifies when a caregiver or employee is exempt for pre-service training for emergency behavior intervention.

The proposed repeal of §748.868 deletes the rule as no longer necessary, because the content of the rule is being added to the proposed amendment to §748.867 with substantive modifications.

The proposed amendment to §748.869 (1) simplifies the question at the beginning of the rule; (2) clarifies that instructor-led training and self-instructional training must include objectives, an evaluation or assessment, and a completion certificate; (3) simplifies and streamlines the relevant instructor requirements throughout the rule; and (4) clarifies that only pre-service training relating to administering psychotropic medication and emergency behavior intervention must be instructor-led.

The proposed amendment to Division 4 (1) renames the division to "Curriculum Components for Pre-Service Training" to reflect the proposed rule changes in the division; and (2) renumbers the division from four to five for organizational purposes.

The proposed amendment to §748.881 updates the language of the rule to be consistent with other rules in this chapter.

The proposed amendment to §748.882 updates the language of the rule to be consistent with other rules in this chapter.

The proposed amendment to §748.883 (1) streamlines the rule so it only includes the curriculum components for safe sleeping pre-service training; and (2) deletes the safe-sleeping pre-service training requirement and incorporates the requirement into proposed new §748.863.

The proposed amendment to §748.885 (1) streamlines the rule so it only includes the curriculum components for administering psychotropic medication pre-service training; and (2) deletes the administering psychotropic medication pre-service training requirement and incorporates the requirement into proposed new §748.863.

Proposed new §748.887 replaces the proposed repeal of §748.901 to incorporate into Division 5 the curriculum components for pre-service training for emergency behavior intervention when a GRO does not allow the use of emergency behavior intervention.

Proposed new §748.889 replaces the proposed repeal of §748.903 to incorporate into Division 5 the curriculum components for pre-service training for emergency behavior intervention when a GRO allows the use of emergency behavior intervention.

The proposed repeal of Division 5 deletes the Pre-Service Training Regarding Emergency Behavior Intervention division because the content of the rules in this division are being added to proposed new Division 5, Curriculum Components for Pre-Service Training, for organizational purposes.

The proposed repeal of §748.901 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §748.887 without any modifications.

The proposed repeal of §748.903 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §748.889 without any modifications.

Proposed New Division 6, First Aid and CPR Certification, (1) replaces the proposed repeal of Division 7 to better organize the divisions in this subchapter; and (2) incorporates new rules from the proposed repeal of Division 7.

Proposed new §748.911 incorporates into this one rule the repealed §§748.981, 748.983, 748.985, and 748.987 and: (1) simplifies the language from those rules to make it easier to understand; (2) clarifies that the CPR training must be pediatric and/or adult based on the ages of the children the GRO serves; (3) clarifies that a caregiver may complete first aid training through in-

structor-led training or self-instructional training; and (4) requires first aid and CPR certification by a caregiver within 90 days of employment.

Proposed new §748.913 (1) incorporates the content of the proposed repeal of §748.987, relating to CPR training curriculum requirements; and (2) clarifies that a caregiver may complete CPR training through blended learning as long as the caregiver meets other requirements.

Proposed new §748.915 incorporates, with minor modifications, the content of the proposed repeal of §748.989 on what documentation a GRO must maintain for first aid and CPR certifications.

The proposed amendment to Division 6 renumbers the Annual Training division from six to seven for organizational purposes.

Proposed new §748.930 incorporates part of the content of the proposed repeal of §748.931, on the annual training requirements for caregivers, and: (1) includes a table regarding the overall number of required annual training hours; (2) adds a second table that lists the mandated annual training topics and the hours that a caregiver must complete; (3) decreases the number of annual training hours for normalcy from two hours to one hour; (4) replaces part of the content of the proposed repeal of §748.945 by adding into the second table the mandated annual training requirements for administering psychotropic medication if the caregiver administers such medication; (5) clarifies that to meet the mandated annual training requirements, the training must follow the applicable curriculum requirements in Division 8 of this subchapter; (6) clarifies that caregivers who only care for children receiving treatment services for primary medical needs are exempt from the four hours of emergency behavior intervention training; and (7) clarifies that any other non-mandated annual training must be in areas appropriate to the needs of children for whom the caregiver provides care.

The proposed repeal of §748.931 deletes the rule as no longer necessary because the content of the rule is being added to proposed new §748.930 and §748.931 with substantive modifications.

Proposed new §748.931 incorporates part of the content of the proposed repeal of §748.931, on the annual training requirements for employees, and: (1) includes a table that specifies the annual training hours for each type of employee; (2) adds a second table that lists the mandated annual training topics and the hours that an employee must complete; and (3) decreases the number of annual training hours for normalcy from two hours to one hour to be consistent with the change made for caregivers.

The proposed amendment to §748.935 (1) updates the language of the rule to make it easier to understand; and (2) clarifies that, with the exception of emergency behavior intervention training, a caregiver or employee must complete annual training within 12 months of being hired and every subsequent 12-month period after the anniversary date of hire.

Proposed new §748.936 clarifies the frequencies of emergency behavior intervention training at a GRO that serves children with treatment services and at a cottage home.

The proposed amendment to §748.937 (1) clarifies that a person may complete annual training through instructor-led training or self-instructional training; (2) deletes the exclusion for self-instructional annual emergency behavior intervention training and CPR training, because those issues are more accurately addressed in proposed new §748.941 and §748.911(b); (3) deletes the exclusion of self-instructional training for first aid training, because this is now allowed in proposed new §748.911(a); (4) deletes counting annual emergency behavior intervention training as annual training, because it is redundant; (5) increases, from 10 hours to 15 hours, the number of pre-service hours that a person may carry over and use as annual training hours; (6) increases, from 50 percent to 80 percent, the number of annual training hours that may come from self-instructional training; and (7) increases from 10 hours to 15 hours the number of annual training hours that a person may carry over to the next year.

The proposed amendment to §748.939 (1) deletes subsection (b) because it is already incorporated into the proposed amendment to §748.943; and (2) moves the requirements for instructor-led and self-instruction training in subsection (c) to new proposed §748.941(a) because this information is more germane to that rule.

The proposed repeal of §748.941 deletes the rule as no longer necessary because instructor requirements for certain annual training topics and the content of the rule relating to transportation safety training are being transferred to proposed new §748.941.

Proposed new §748.941 (1) adds requirements for instructor-led and self-instruction training from proposed amended §748.939; (2) clarifies that annual training for emergency behavior intervention and administering psychotropic medication must be instructor-led; (3) describes the requirements for annual emergency behavior intervention and administering psychotropic medication training instead of referring back to the pre-service requirements in §748.869; and (4) incorporates the content of the proposed repeal of §748.941 relating to transportation safety training.

Proposed new Division 8 creates a new division entitled Topics and Curriculum Components for Annual training for organization purposes.

The proposed amendment to §748.943 (1) clarifies what areas or topics are appropriate for caregivers and employees; (2) adds extra areas or topics for annual training appropriate for both caregivers and employees; (3) clarifies that annual topics for employees must be in areas appropriate to the needs of children for whom the GRO provides care; and (4) adds emergency behavior intervention as an appropriate area or topic for annual training for employees.

The proposed amendment to §748.944 updates the language of the rule to make it easier to understand.

The proposed repeal of §748.945 deletes the rule as no longer necessary because the content of the rule is being added to proposed new §748.945 with substantive modifications. The part of the proposed repeal of §748.945 that required a caregiver to take the annual administering psychotropic medication training no later than 12 months from the caregiver's previous training on the topic is not being included in proposed new §748.945.

Proposed new §748.945 incorporates part of the proposed repeal of §748.945 relating to the curriculum component for annual training for administering psychotropic medication.

The proposed amendment to §748.947 (1) updates the language of the rule to make it easier to understand; and (2) updates two citations.

The proposed repeal of Division 7 deletes the First-Aid and CPR Certification division as no longer necessary, because the content of the rules in this division are being added to proposed new

Division 6, First Aid and CPR Certification, for organizational purposes.

The proposed repeal of §§748.981, 748.983, 748.985, and 748.987 deletes the rules as no longer necessary, because the content of the rules is being added to proposed new §748.911 and §748.913 with substantive modifications.

The proposed repeal of §748.989 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §748.915 with non-substantive modifications.

The proposed amendment to §748.1211 removes references to "sponsoring families."

The proposed amendment to §748.1217 adds the child's educational and behavioral level of functioning and any history of trauma to the list of things that an admission assessment must cover prior to a child's non-emergency admission.

The proposed amendment to §748.1303 (1) adds a requirement to notify a parent to request an Admission, Review, and Dismissal (ARD) or Individual Transitional Planning (ITP) meeting if needed; (2) adds a requirement for attending ARD or ITP meetings, if held; and (3) clarifies that the GRO should know the specifics of a child's Individual Education Plan (IEP) and support the school's efforts to implement the IEP, if applicable.

Proposed new §748.1553 (1) outlines what a caregiver must do when a child is injured or ill and requires immediate treatment by a health-care professional; and (2) clarifies that a caregiver must not be required to seek approval to contact emergency services or to take the child to the nearest emergency room.

The proposed repeal of §748.1937 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §748.1937 with some substantive changes.

Proposed new §748.1937 (1) incorporates the proposed repeal of §748.1937; (2) adds four situations when an adult in care may share a bedroom with a child in care: (A) when they are siblings; (B) when the adult is the child's parent; (C) when they are both non-ambulatory and receive treatment services for primary medical needs; and (D) when an adult in care shares a bedroom with a child in care is at least 16-years old and the age difference is not more than 24 months, which implements H.B. 700, Family Code §264.1214(c); (3) clarifies that the service planning team must complete and document an assessment determining that there is no known risk to the child sharing a room with an adult by looking at certain factors, except when the adult is the child's parent; (4) clarifies that the adult and child must not sleep in the same bed unless the adult is the child's parent and the child is between the ages of one year and 10 years old; and (5) includes an exception for traveling and camping situations.

The proposed amendment to §748.2009 clarifies procedures for ensuring a non-prescription medication or supplement is not contraindicated with any other medication prescribed to a child.

The proposed amendment to §748.2307 deletes "and verbal abuse" from subsection (4) because it is already covered under subsections (8) and (9).

The proposed amendment to §748.2507 adds a requirement to provide the parent with a copy of the PRN order within 72 hours of obtaining a PRN order for a personal restraint, emergency medication, or seclusion.

The proposed amendment to §748.2553 and §748.2801 clarifies that a prone or supine hold is meant to be transitional.

The proposed amendment to §748.2651 clarifies that a video camera may be used to continuously observe a child in seclusion, but that the GRO may not use a video camera in lieu of direct observation.

Proposed new §748.2857 adds requirements to notify the parent when the GRO has used an emergency behavior intervention, other than a short personal restraint, with the parent's child.

The proposed amendment to §748.2953 clarifies that a GRO must submit aggregate numbers of emergency behavior interventions to CCR no later than 15 days after the end of each quarter.

The proposed amendment to §748.3273 (1) deletes the requirement for cotton balls in a first-aid kit; and (2) amends the requirement for adhesive bandages in a first-aid kit so that they do not have to be multi-sized.

Proposed new §748.3281 describes an unsafe product as it is determined by the United States Consumer Product Safety Commission.

Proposed new §748.3283 outlines responsibilities for ensuring there are no unsafe products at the GRO and a notice is posted for parents and employees to inform them of unsafe products recalled by the United States Consumer Product Safety Commission.

The proposed amendment to §748.3301 (1) reorganizes the content of the rule; and (2) clarifies that buildings must not pose a risk to the health and safety of children.

The proposed amendment to §748.3361 updates the language of the rule for better readability and understanding.

The proposed repeal of §748.3363 deletes the rule as no longer necessary because the content of the rule is being added to proposed new §748.3363 with substantive changes.

Proposed new §748.3363 (1) incorporates the proposed repeal of §748.3363; (2) adds three situations when children of opposite gender may share a bedroom: (A) when they are siblings; (B) when the older child is the younger child's parent; and (C) when they are both non-ambulatory and receive treatment services for primary medical needs; (3) clarifies that the service planning team must complete and document an assessment determining there is no known risk to each child by looking at certain factors, except when the older child is the younger child's parent; and (4) clarifies the factors to be assessed include the children's behavior, compatibility, relationship, any history of possible sexual trauma or sexually inappropriate behavior, and any factors affecting the appropriateness of the children sharing a bedroom.

The proposed amendment to §748.3421 clarifies that poisonous and flammable materials must be stored in an area that is inaccessible to children.

The proposed amendment to §748.3443 clarifies that food must be refrigerated if it requires refrigeration.

The proposed amendment to §748.3601 deletes subsection (7), combines its substantive content with subsection (6), and renumbers the subsections accordingly.

The proposed amendment to §748.3603 (1) clarifies that a GRO is not required to have a pool lock on doors leading to the swimming pool area that an adult can open if the state or local fire authority determines that the height of the lock violates or would violate the fire code and the GRO keeps documentation from the

fire authority on file; and (2) makes non-substantive changes for better understanding.

The proposed amendment to §748.3757 (1) clarifies that life jackets must be Coast Guard approved; (2) adds a subsection requiring a child under the age of 12, or a child of any age who cannot swim, to wear a Coast Guard-approved life jacket when swimming in other bodies of water such as ponds, rivers, lakes, and oceans; and (3) adds a subsection allowing the swimming ratios to not apply as long as child/caregiver ratios are met under §748.1003, (A) to children over 12 years of age who are competent swimmers, regardless of the type of body of water, and (B) to children of any age who are participating in sprinkler play or are playing in a splash pad or wading pool that has standing water less than two feet.

The proposed amendment to §748.3931 (1) clarifies that the GRO must develop and enforce a policy identifying specific precautions to ensure that a child does not have unsupervised access to weapons, firearms, explosive materials, or projectiles including specific storage requirements; (2) adds a subsection exempting firearms that are inoperable and solely ornamental from the storage requirements; (3) clarifies that a toy that explodes or shoots must be age appropriate to the child; (4) deletes "such as fireworks or BB guns" in subsection (a), so that fireworks and BB guns are not used as examples of toys that explode or shoot; and (5) reorganizes the rule content and makes other non-substantive changes.

The proposed amendment to §748.4001 deletes the broad requirement to ensure the safety of children during any transportation provided by the GRO because more specific rule requirements in Subchapter R ensure the safety of children during transportation.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules: (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; (3) are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and (4) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be: (1) an enhancement in child health and safety; (2) an improvement in quality of care; and (3) increased compliance with statutory requirements due to clearer wording and the streamlining of rules that will help providers' understanding.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur economic costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R102" in the subject line.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

26 TAC §748.43

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Gov-

ernment Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

(2) Activity space--An area or room used for child activities.

(3) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, sociocultural background, and community setting.

(4) Adult--A person 18 years old or older.

(5) Caregiver--A person counted in the child/caregiver ratio, whose duties include the direct care, supervision, guidance, and protection of a child. This does not include a contract service provider who:

(A) Provides a specific type of service to your operation for a limited number of hours per week or month; or

(B) Works with one particular child.

(6) Certified lifeguard--A person who has been trained in rescue techniques, lifesaving, and water safety by a qualified instructor from a recognized organization that awards a certificate upon successful completion of the training. A certified lifeguard ensures the safety of persons by preventing and responding to water related emergencies.

(7) Chemical restraint--A prohibited type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of a medication is not a chemical restraint under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for medical or dental reasons; and

(C) Has a secondary effect of immobilizing or sedating a child.

(8) Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(9) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this chapter [~~title~~] (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(10) Child in care--A child who is currently admitted as a resident of a general residential operation, regardless of whether the child is temporarily away from the operation, as in the case of a child at school or at work. Unless a child has been discharged from the operation, the child is considered a child in care.

(11) Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(12) Contract service provider--A person or entity that is contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(13) [~~(12)~~] Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership," [~~"partnership",~~] which is defined separately.

(14) [~~(13)~~] Cottage or cottage home--A living arrangement for children who are not receiving treatment services in which:

(A) Each group of children has separate living quarters;

(B) 12 or fewer children are in each group;

(C) Primary caregivers live in the children's living quarters, 24 hours per day for at least four days a week or 15 days a month; and

(D) Other caregivers are used only to meet the child-to-caregiver ratio in an emergency or to supplement care provided by the primary caregivers.

(15) [~~(14)~~] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(16) [~~(15)~~] Days--Calendar days, unless otherwise stated.

(17) [~~(16)~~] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(18) [~~(17)~~] Department--The Texas Department of Family and Protective Services (DFPS).

(19) [~~(18)~~] Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(20) [~~(19)~~] Emergency behavior intervention [~~Behavior Intervention~~] (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(21) [~~(20)~~] Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of a medication is not an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for a medical or dental reason (e.g. Benadryl for an allergic reaction or medication to control seizures); and

(C) Has a secondary effect of modifying a child's behavior.

(22) [~~(21)~~] Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(23) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. For the purposes of this chapter, employees include all operation staff and any owner who is present at the operation or transports any child in care.

(24) [~~(22)~~] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Texas Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(25) [~~(23)~~] Field trip--A group activity conducted away from the operation.

(26) [~~(24)~~] Food service--The preparation or serving of meals or snacks.

(27) [~~(25)~~] Full-time--At least 30 hours per week.

(28) [~~(26)~~] Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(29) [~~(27)~~] General Residential Operation--A residential child-care operation that provides child care for seven [~~13~~] or more children or young adults. The care may include treatment services or [~~and/or~~] programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, residential treatment centers, and halfway houses.

(30) [~~(28)~~] Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the operation.

(31) [~~(29)~~] Group of children--Children assigned to a specific caregiver or specific caregivers. Generally, the group stays with the assigned caregivers [~~caregiver(s)~~] throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(32) [~~(30)~~] Health-care professional--A licensed physician, licensed advanced practice registered nurse (APRN), physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include physicians, nurses, [~~medical doctors~~] or other medical personnel not licensed to practice in the United States or in the country in which the person practices.

(33) [~~(31)~~] High-risk behavior--Behavior of a child that creates an immediate safety risk to self or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse, fire-setting, and sexual aggression or perpetration.

(34) [~~(32)~~] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(35) [~~(33)~~] Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury to self or others, or the probability of bodily harm resulting from a child running away if less than 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or

(B) Verbal threats or verbal attacks.

(36) [~~(34)~~] Infant--A child from birth through 17 months.

(37) [~~(35)~~] Livestock--An animal raised for human consumption or an equine animal.

(38) [~~(36)~~] Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(39) [~~(37)~~] Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(40) [~~(38)~~] Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(41) [~~(39)~~] Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(42) [~~(40)~~] Non-mobile--A child that is not able to move from place to place, even with assistance.

(43) Normalcy--See §748.701 of this chapter (relating to What is "normalcy"?).

(44) [~~(41)~~] Operation--General residential operations, including residential treatment centers.

(45) [~~(42)~~] Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns the operation.

(46) [~~(43)~~] Parent--A person or entity that [~~who~~] has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian of the child or a legally authorized representative of an entity with that status.

(47) [~~(44)~~] Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(48) [~~(45)~~] Permit holder--The owner of the operation that is granted the permit.

(49) [~~(46)~~] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your operation voluntarily closes or is required to close through an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions).

(50) [~~(47)~~] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(51) [~~(48)~~] Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(52) [~~(49)~~] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(53) [~~(50)~~] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(54) [~~(51)~~] Prone restraint--A restraint in which the child is placed in a chest-down hold.

(55) [~~(52)~~] Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability or an intellectual disability); and

(D) Written summary of the assessment.

(56) [~~(53)~~] Re-evaluate--Re-assessing all factors required for the initial evaluation for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(57) [~~(54)~~] Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(58) Residential child-care operation--A licensed or certified operation that provides residential child care. Also referred to as a "residential child-care facility."

(59) [~~(55)~~] Residential Treatment Center (RTC)--A general residential operation for seven [~~13~~] or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(60) [~~(56)~~] Sanitize--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labeling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or item to air-dry.

(61) [~~(57)~~] School-age child--A child who is five years old or older and is enrolled in or has completed kindergarten [~~who will attend school in August or September of that year~~].

(62) [~~(58)~~] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(63) [~~(59)~~] Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other children [~~residents~~] and the placement of the child alone in an area from which the child [~~resident~~] is prevented from leaving. Examples of such an area include where the child is prevented from leaving by a physical barrier, force, or threat of force.

(64) [~~(60)~~] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(65) [(61)] Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(66) [(62)] State or local fire authority [inspector]--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

(67) [(63)] State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.

(68) [(64)] Substantial physical injury--Physical injury serious enough that a reasonable person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is serious includes the location, [and/or] severity of the bodily harm, and [and/or] age of the child. Substantial physical injury does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(69) [(65)] Supplements--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(70) [(66)] Supine restraint--Placing a child in a chest up restraint hold.

(71) [(67)] Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs, or other bodies of water.

(72) [(68)] Toddler--A child from 18 months through 35 months.

(73) [(69)] Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Texas Penal Code §20A.02 or §20A.03.

(74) [(70)] Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(75) [(71)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(76) [(72)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for the human immunodeficiency virus (HIV), the hepatitis B virus (HBV) [HIV, HBV], and other blood-borne pathogens.

(77) [(73)] Unsupervised childhood activities--Childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

(78) [(74)] Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(79) [(75)] Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation; or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has unsupervised access to a child in care.

(80) [(76)] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 1. PLANS AND POLICIES REQUIRED FOR THE APPLICATION PROCESS

26 TAC §748.105

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.105. What are the requirements for my personnel policies and procedures?

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-care administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions; for [. For] each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis; and for [. For] part-time and consulting positions, the plan must specify the number of hours and [and/or] frequency of services;

(C) Documents your staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies; and

(D) Identifies, if you provide treatment services, your ability [:]

[(i)]] [Ability] to have enough caregivers, including caregivers who are awake throughout the night to supervise children 24 hours a day, including frequent one-to-one monitoring whenever necessary to meet the needs of a particular child. [; and]

[(ii) Staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies;]

(4) Include written training requirements for employees and caregivers. [;]

(5) Include policies on whether your operation allows individual caregivers to take children away from the operation for day or overnight visits. The policy must require obtaining the parent's written approval prior to allowing overnight visits with staff. The policy must also address the issue outlined in §748.685(e) of this chapter [title] (relating to What responsibilities does a caregiver have when supervising a child or children?). [;]

(6) Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks). [;]

(7) Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report the employee's [their] suspicion directly to the Texas Abuse and Neglect Hotline [us and may not delegate this responsibility], as directed by Texas Family Code §261.101(b). An employee may not delegate the responsibility to make a report, and you may not require an employee to seek approval to file a report or to notify you that a report was made. [;]

(8) Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality. [; and]

(9) Include either the model drug testing policy or a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

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

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §748.303, §748.311

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 GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.303. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames [time frame]:
Figure: 26 TAC §748.303(a)
[Figure: 26 TAC §748.303(a)]

(b) If there is a medically pertinent incident [, such as a seizure,] that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) If the child returns before [You must document an unauthorized absence that does not meet] the required reporting timeframe outlined [time requirements defined] in subsection (a)(8) - (10) [(a)(7) - (9)] of this section, you are not required to report the absence as a serious incident. Instead, you must document within 24 hours after you become aware of the unauthorized absence in [. You must document the absence:]

[(1)] [In] the same manner as for a serious incident, as described in §748.311 of this division. [; and]

[(2) Complete an addendum to the serious incident report to finalize the documentation requirements, if the child returns to an operation after 24 hours.]

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, if there is a fatality [as outlined in the chart above];

(2) The legally authorized representative [parents], if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frames [time frame]:
Figure: 26 TAC §748.303(e)
[Figure: 26 TAC §748.303(e)]

§748.311. How must I document a serious incident?

A serious incident must be documented in a written report that includes the following information:

(1) The name of the operation, physical address, and telephone number;

(2) The time and date of the incident;

(3) The name, age, gender, and date of admission of the child or children involved;

(4) The names of all adults involved and their role in relation to the child(ren);

(5) The names or other means of identifying witnesses to the incident, if any;

(6) The nature of the incident;

(7) The circumstances surrounding the incident;

(8) Interventions made during and after the incident, such as medical interventions, contacts made, and other follow-up actions;

(9) The treating licensed health-care professional's name, findings, and treatment, if any; [and]

(10) The resolution of the incident; and

(11) If the child returns to the operation after you complete the report for an unauthorized absence, an update regarding the unauthorized absence and the child's return.

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SUBCHAPTER E. PERSONNEL
DIVISION 1. GENERAL REQUIREMENTS
26 TAC §748.511

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.511. Is an employee, contract service provider, or volunteer allowed to be in possession of a handgun?

An employee, contract service provider, or volunteer may not be in possession of a handgun while at your operation or while caring for children.

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DIVISION 2. CHILD-CARE ADMINISTRATOR
26 TAC §748.535

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.535. What responsibilities must the child-care administrator have?

The child-care administrator must:

(1) Have daily supervision and on-site administrative responsibility for the overall operation; [and]

(2) Ensure that the operation complies with current heightened monitoring plans, if applicable; and

(3) [(2)] Be responsible for or assign responsibility for:

(A) Overseeing staffing patterns to ensure the supervision and the provision of child-care services that meet the needs of children in care;

(B) Ensuring the provision of planned but flexible program activities designed to meet the developmental needs of children;

(C) Having a system in place to ensure an employee is available to handle emergencies;

(D) Assigning tasks to caregivers that do not conflict or interfere with caregiver responsibilities;

(E) Administering and managing the operation according to your policies;

(F) Ensuring that the operation complies with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(G) Ensuring a child in care is not assigned, utilized, or allowed to [~~does not~~] act as a caregiver; and

(H) Ensuring persons whose behavior or health status is known to present [~~presents~~] a danger to children are not allowed at the operation.

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

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DIVISION 7. CONTRACT STAFF AND VOLUNTEERS

26 TAC §§748.721, 748.725, 748.729

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 GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.721. What are the requirements for a volunteer?

(a) You must maintain a personnel record for each volunteer.

(b) The personnel record must include a statement signed and dated by the volunteer indicating the volunteer must immediately report any suspected incident of abuse, neglect, or exploitation to the Texas Abuse and Neglect Hotline and the operation's administrator or administrator's designee. An internal reporting policy may not require or allow a person to delegate the person's responsibility or require a person to obtain approval to report suspected abuse, neglect, or exploitation.

§748.725. Can a volunteer or [~~,~~] a volunteer's family[~~, or a sponsoring family~~] take a child in care for an overnight or weekend visit?

(a) Yes, but when a volunteer or [~~,~~] a volunteer's family[~~, or a sponsoring family~~] takes a child who is in care for an overnight or weekend visit, this is a volunteer activity.

(b) Neither the volunteer nor the family would have to comply with employee or caregiver requirements, but:

(1) The volunteer or [~~and/or~~] the family would have to meet the relevant background checks; and

(2) You [~~In order for a volunteer or a family to take a child out of care for more than 48 hours, you~~] must get written approval from the parent.

§748.729. What must I do when a child in care visits a volunteer or a volunteer's [~~sponsoring~~] family for a day or overnight?

If a child has a day or overnight visit with a volunteer or [~~,~~] a volunteer's family[~~, or sponsoring family~~], you must ensure that:

(1) The child is properly supervised, properly fed and hydrated, and provided with safe housing accommodations, if applicable;

(2) The child's health, safety, and well-being are protected; and

(3) Prior to the visit, the person responsible for the child during the visit has to receive the same information that you as a respite child-care services provider would receive, as specified in §748.4265 of this chapter [~~title~~] (relating to What information regarding a child must I receive prior to providing respite child-care services to that child?).

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

26 TAC §748.801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC

to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.801. What do certain words mean in this subchapter?

The words and terms used in this subchapter have the following meaning:

(1) CPR--Cardiopulmonary resuscitation.

(2) Hours--Clock hours.

(3) Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. Instructor-led training does not have to be in person, but it [It] must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training material. For such an opportunity to exist, the instructor must be able to answer questions, provide feedback on skills practice, provide guidance or information on additional resources, and proactively interact with students. Examples of this type of training include classroom training, online [on-line] distance learning, blended learning, video-conferencing, or other group learning experiences.

(4) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(5) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year. See [, see] 748.937(d) of this subchapter [title] (relating to What types of hours or instruction can be used to complete the annual training requirements?).

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DIVISION 2. OVERVIEW OF TRAINING AND EXPERIENCE REQUIREMENTS

26 TAC §748.811, §748.813

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.811. What are the training and experience requirements for a caregiver?

(a) A caregiver must complete the following training requirements, unless the caregiver meets the requirements of an exemption or a waiver for the training that is provided in this subchapter:
Figure: 26 TAC §748.811(a)

(b) You must ensure that a caregiver who provides care to a child receiving treatment services meets the pre-service experience requirements specified in §748.861 of this subchapter (relating to What are the pre-service experience requirements for a caregiver?).

§748.813. What are the training requirements for an employee?

An employee must complete the following training requirements, unless the employee meets the requirements of an exemption for the training that is provided in this subchapter:
Figure: 26 TAC §748.813

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DIVISION 2. ORIENTATION

26 TAC §748.833

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeal affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.833. Must I provide orientation to an employee who has previously worked as an employee?

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

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DIVISION 3. [2.] ORIENTATION

26 TAC 748.831, 748.833

STATUTORY AUTHORITY

The new section and amendment are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new section and amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.831. What is the orientation requirement for caregivers and employees?

(a) Prior to beginning job duties or having contact with children in care, each caregiver or employee must have orientation that includes:

(1) An overview of the relevant and applicable rules of this chapter;

(2) Your philosophy, organizational structure, policies, and a description of the services and programs you offer; and

(3) The needs and characteristics of children that you serve.

(b) You must document the completion of the orientation in the appropriate personnel record.

§748.833. When may a caregiver or employee be exempt from orientation?

(a) A person who was a caregiver or employee at your operation during the past 12 months may be exempt from orientation if you meet the following requirements:

(1) You discuss with the person any changes in your services or programs that have occurred since the person was previously a caregiver or employee;

(2) If the person is an employee, you ensure the employee received training during the past 12 months from your operation on prevention, recognition, and reporting on child abuse, neglect, and exploitation; and

(3) If the person is acting as a caregiver, you do not allow the person to be the only caregiver for a group of children before you meet the requirement in paragraph (1) of this section.

(b) You must document the discussion and the previous training in the person's personnel record.

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DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §748.863, §748.868

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeals affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.863. What are the pre-service hourly training requirements for caregivers and employees?

§748.868. Must I provide pre-service training regarding normalcy to a child-care administrator, professional level service provider, treatment director, or case manager who was previously employed by a residential child-care operation?

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DIVISION 4. [3.] PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §§748.863, 748.864, 748.867, 748.869

STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections and amendments affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.863. What are the pre-service training requirements for a caregiver?

(a) A caregiver must complete the following applicable types of pre-service training within the noted time frame:
Figure: 26 TAC §748.863(a)

(b) A caregiver who has not completed all the pre-service training requirements in subsection (a) of this section may not be counted in the child to caregiver ratio unless there is a fully qualified caregiver counted in ratio at the same time.

(c) A caregiver who cares exclusively for children receiving treatment services for primary medical needs is exempt from the pre-service EBI training requirement.

(d) To meet the pre-service training requirements, the training must comply with the applicable curriculum requirements in Division 5 of this subchapter (relating to Curriculum Components for Pre-Service Training).

(e) You must document the completion of each training requirement in the appropriate personnel record.

§748.864. What are the pre-service training requirements for an employee?

(a) An employee must complete the following applicable training types and hours within the noted time frames:
Figure: 26 TAC §748.864(a)

(b) To meet the pre-service training requirements, the training must comply with the applicable curriculum requirements in Division 5 of this subchapter (relating to Curriculum Components for Pre-Service Training).

(c) You must document the completion of each training requirement in the appropriate personnel record.

§748.867. What caregivers or employees are exempt from certain [~~Must I provide~~] pre-service training requirements [~~to a caregiver or an employee who has previously worked in an operation~~]?

(a) A caregiver is exempt from completing the eight hours of general pre-service training if the caregiver has been employed as a caregiver in a general residential operation during the past 12 months.

(b) An employee is exempt from completing the two hours of normalcy training if the employee has:

(1) Been employed by a general residential operation during the past 12 months;

(2) Received training on normalcy during the past 12 months; and

(3) Can document that the training was received.

(c) [~~(b)~~] A caregiver or an employee is exempt from completing [~~does not have to complete~~] the pre-service training for [~~regarding~~] emergency behavior intervention if the caregiver or employee:

(1) Has been employed by a general residential operation during the last 12 months;

(2) Has received emergency behavior intervention training during the past 12 months that meets the required curriculum components of: [~~in the types of emergency behavior intervention used at your operation; and~~]

(A) §748.887 of this subchapter (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavioral intervention?); or

(B) §748.889 of this subchapter (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?); and

(3) Can demonstrate knowledge and competency of the training material [~~both~~] in writing and, if the general residential operation allows the use of emergency behavior intervention, in physical techniques.

(d) [~~(c)~~] You must document the exemption factors in the appropriate personnel record.

§748.869. How must [~~What are the instructor requirements for providing~~] pre-service training be conducted?

(a) Instructor-led training and self-instructional training must include: [~~The training must instructor-led.~~]

(1) Specifically stated learning objectives;

(2) An evaluation or assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(3) A certificate, letter, or a signed and dated statement of successful completion from the training source.

(b) Pre-service training must be provided by an instructor who: [~~A qualified instructor must deliver the pre-service training. A qualified instructor must~~]

(1) Holds [~~hold~~] a generally recognized credential; or

(2) Possesses [~~possess~~] documented knowledge or [~~and/or~~] experience relevant to the training the instructor will provide.

(c) Training on administering psychotropic medication must be instructor-led, as defined §748.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?). The instructor must be a health-care professional or pharmacist.

[~~(c) A health-care professional or a pharmacist must provide training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.~~]

(d) Training on [~~To provide training in~~] emergency behavior intervention must [~~the~~]:

(1) Be instructor-led with each instructor [~~Instructor must be~~] certified in a recognized method of emergency behavior intervention [~~,~~] or otherwise [~~be~~] able to document knowledge of:

(A) Emergency [~~The emergency~~] behavior intervention;

(B) The course material;

(C) Methods for delivering the training, including physical techniques for restraints, if applicable [Training delivery methods and techniques]; and

(D) Methods for evaluating and assessing a participant's knowledge and competency of the training material and physical [Training evaluation or assessment methods and] techniques, if applicable; [and]

(2) Be [Training must be] competency-based; and [and require participants to demonstrate skill and competency at the end of the training.]

(3) At the end of the training, require each participant to demonstrate knowledge and competency of the training material:

(A) In writing; and

(B) If the general residential operation allows the use of emergency behavior intervention, by demonstrating the physical technique the participant is allowed to use.

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DIVISION 5. [4.] CURRICULUM COMPONENTS FOR [GENERAL] PRE-SERVICE TRAINING [AND PRE-SERVICE TRAINING REGARDING NORMALCY]

26 TAC §§748.881 - 748.883, 748.885, 748.887, 748.889

STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections and amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.881. What curriculum components must be included in the general pre-service training?

The general pre-service training [curriculum] must include the following curriculum components:

(1) Topics appropriate to the needs of children for whom the caregiver will be providing care, such as developmental stages of children, fostering children's self-esteem, constructive guidance and discipline of children, water safety, strategies and techniques for monitoring and working with these children, and age-appropriate activities for the children;

(2) Measures to prevent, recognize, [identify, treat,] and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation;

(3) Procedures to follow in emergencies, such as weather-related emergencies, volatile persons, and severe injury or illness of a child or adult;

(4) Preventing the spread of communicable diseases;

(5) The location and use of fire extinguishers and first-aid equipment;

(6) Trauma informed care; and

(7) Normalcy.

§748.882. What curriculum components must be included in the pre-service training for [regarding] normalcy?

The pre-service training for [regarding] normalcy must include the following curriculum components:

(1) A discussion of the definitions of normalcy and the reasonable and prudent parent standard;

(2) The developmental stages of children, including a discussion of the cognitive, social, emotional, and physical development of children;

(3) Age appropriate activities for children, including unsupervised childhood activities;

(4) The benefits of childhood activities to a child's well-being, mental health, and social, emotional, and developmental growth;

(5) How to apply the reasonable and prudent parent standard to make decisions; and

(6) The child's and the caregiver's responsibilities when participating in childhood activities.

§748.883. What curriculum components must be included in the [additional general] pre-service training for safe sleeping [requirements are there for a caregiver who will care for children younger than two years old]?

The pre-service training for safe sleeping must include the following curriculum components [You must ensure that each caregiver who provides care for children younger than two years old receives general pre-service training on]:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding safe sleeping practices [sleep environments] and preventing sudden infant death syndrome; and

(3) Understanding early childhood brain development.

§748.885. What curriculum components must be included in the [additional general] pre-service training for administering [requirements are there for a caregiver that administers] psychotropic medication?

The pre-service training for administering [Before a caregiver is permitted to administer] psychotropic medication must include the following curriculum components [, you must ensure that each caregiver that administers psychotropic medication receives general pre-service training on]:

(1) Identification of psychotropic medications;

(2) Basic pharmacology (the actions and side effects of, and possible adverse reactions to, various psychotropic medications);

(3) Techniques and methods of administering medications;

(4) Who is legally authorized to provide consent for the psychotropic medication; and

(5) Any related policies and procedures.

§748.887. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?

If you do not allow the use of emergency behavior intervention, the pre-service training curriculum for emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques for less restrictive interventions, including the following curriculum components:

(1) Developing and maintaining an environment that supports positive and constructive behaviors;

(2) The causes of behaviors potentially harmful to a child, including aspects of the environment;

(3) Early signs of behaviors that may become dangerous to a child or others;

(4) Strategies and techniques a child can use to avoid harmful behaviors;

(5) Teaching a child to use the strategies and techniques of your operation's de-escalation protocols to avoid harmful behavior, and supporting the child's efforts to progress into a state of self-control;

(6) Less restrictive strategies caregivers can use to intervene in potentially harmful behaviors;

(7) Less restrictive strategies caregivers can use to engage a child and de-escalate a situation;

(8) Addressing circumstances when all de-escalation strategies fail; and

(9) The risks associated with the use of prone or supine restraints, including positional, compression, or restraint asphyxia.

§748.889. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?

(a) If you allow the use of emergency behavior intervention, at least 75 percent of the pre-service training for emergency behavior intervention must focus on early identification of potential problem behaviors and strategies and techniques for less restrictive interventions, including the curriculum components listed in §748.887 of this division (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for emergency behavior intervention?).

(b) The training does not have to address the use of any emergency behavior intervention that your policies do not allow.

(c) The other 25 percent of the pre-service training for emergency behavior intervention must include the following components:

(1) Different roles and responsibilities of caregivers qualified in emergency behavior intervention, versus employees or volunteers who are not qualified in emergency behavior intervention;

(2) Escape and evasion techniques to prevent harm to the child and caregiver without requiring the use of an emergency behavior intervention;

(3) Safe implementation of the restraints and seclusion techniques and procedures that are appropriate for the age and weight of children served and permitted by the rules in this chapter and your policies and procedures;

(4) The physiological impact of emergency behavior intervention;

(5) The psychological impact of emergency behavior intervention, such as flashbacks from prior abuse;

(6) How to adequately monitor the child during the administration of an emergency behavior intervention to prevent injury or death;

(7) Monitoring physical signs of distress and obtaining medical assistance;

(8) Health risks for children associated with the use of specific techniques and procedures;

(9) Drawings, photographs, or videos of each personal or mechanical restraint permitted by your policy; for mechanical restraints, this must include the manufacturer's complete specifications for each device permitted, an explanation of modifications to the manufacturer's specifications, and a copy of the approval of the modification from a licensed psychiatrist; and

(10) Strategies for re-integration of children into the environment after the use of emergency behavior intervention, including the debriefing of caregivers and the child.

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

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DIVISION 5. PRE-SERVICE TRAINING REGARDING EMERGENCY BEHAVIOR INTERVENTION

26 TAC §748.901, §748.903

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeals affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.901. If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

§748.903. If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training regarding emergency behavior intervention?

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DIVISION 6. FIRST AID AND CPR CERTIFICATION

26 TAC §§748.911, 748.913, 748.915

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.911. Who must have first aid and CPR training?

(a) Each caregiver must have a current certificate of training with an expiration or renewal date in first aid with rescue breathing and choking. This training may be through instructor-led training or self-instructional training.

(b) At least one caregiver counted in the child to caregiver ratio must have a current certificate of training with an expiration or renewal date in:

(1) Pediatric CPR, if your operation only serves children under 12 years of age;

(2) Adult CPR, if your operation only serves children 12 years of age and older; or

(3) Pediatric and Adult CPR, if your operation serves children between the ages of birth through 17. You may meet this requirement if:

(A) One caregiver counted in the child to caregiver ratio has a current certificate of training in both types of CPR; or

(B) One caregiver counted in the child to caregiver ratio has a current certificate of training in Pediatric CPR, and another caregiver counted in the child to caregiver ratio has a current certificate of training in Adult CPR.

(c) Each caregiver must:

(1) Be certified in first aid within 90 days of employment; and

(2) Be certified in CPR and able to respond to emergencies prior to being the only caregiver counted in the child to caregiver ratio.

§748.913. What are the requirements for CPR training?

CPR training:

(1) Must adhere to the guidelines for CPR for a layperson established by the American Heart Association, and consist of a curriculum that includes use of a CPR manikin and both written and hands-on skill-based instruction, practice, and testing; and

(2) May be provided through blended learning that utilizes online technology, including self-instructional training, as long as the learning meets the criteria in paragraph (1) of this section.

§748.915. What documentation must I maintain for first aid and CPR certifications?

(a) You must document the caregiver's completion of each training requirement in the appropriate personnel record. The documentation may be a certificate, letter, or a signed and dated statement of successful completion from the training source. You may maintain a photocopy of the original first-aid or CPR certificate or letter in the personnel record, as long as the caregiver can provide an original document upon request by Licensing.

(b) The documentation must include:

(1) The participant's name;

(2) Date of the training;

(3) Title or subject of the training;

(4) The trainer's name and qualifications;

(5) The expiration date of the certification as determined by the organization providing the certification; and

(6) Length of the training in hours.

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

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DIVISION 6. ANNUAL TRAINING

26 TAC §748.931, §748.941

STATUTORY AUTHORITY

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

by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeals affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.931. What are the annual training requirements for caregivers and employees?

§748.941. What are the instructor requirements for providing annual training?

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

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DIVISION 6. ANNUAL TRAINING

26 TAC §748.945

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeal affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.945. For a caregiver who administers psychotropic medication, what annual training is required?

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

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DIVISION 7. [~~6.~~] ANNUAL TRAINING

26 TAC §§748.930, 748.931, 748.935 - 748.937, 748.939, 748.941

STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections and amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.930. What are the annual training requirements for a caregiver?

(a) A caregiver must complete the number of annual training hours described in the following chart:
Figure: 26 TAC §748.930(a)

(b) For the annual training hours described in subsection (a) of this section, each caregiver must complete the following specific types of training and hours:
Figure: 26 TAC §748.930(b)

(c) To meet the mandated annual training requirements in subsection (b) of this section, the training must comply with the applicable curriculum requirements in Division 8 of this subchapter (relating to Topics and Curriculum Components for Annual Training).

(d) After completing the type of annual training required in subsection (b) of this section, any remaining number of annual training hours must be in areas appropriate to the needs of children for whom the caregiver provides care, as required by §748.943 of this subchapter (relating to What areas or topics are appropriate for annual training?).

§748.931. What are the annual training requirements for an employee?

(a) Each type of employee in the chart must complete the following number of annual training hours:
Figure: 26 TAC §748.931(a)

(b) For the annual training hours described in subsection (a)(1) of this section, each employee must complete the following specific types of training and hours:
Figure: 26 TAC §748.931(b)

(c) For the annual training hours described in subsection (a)(2) of this section, each employee must complete the following specific types of training and hours:
Figure: 26 TAC §748.931(c)

(d) An employee described in subsection (a)(2) of this section may use annual training hours that the employee completes to maintain a relevant professional license, if the hours include the necessary components of subsection (c) of this section or completes the components separately.

(e) There are no annual training requirements for emergency behavior intervention. However, the employee must be retrained whenever there is a substantial change in techniques, types of intervention, or agency policies for emergency behavior intervention.

§748.935. When must an employee or caregiver [a person] complete the annual training?

(a) With the exception of emergency behavior intervention training, each [Each] person must complete the annual training:

(1) Within 12 months from when you hire the person; and

(2) During each subsequent 12-month period after the anniversary date of hire.

(b) Alternately, you have the option of prorating the person's annual training requirements from the date of hire to the end of the calendar year or the end of the operation's fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) Whether you use subsection (a) or (b) of this section as your [The] method for completing annual training requirements, you must use the method consistently [must be consistent] throughout your operation.

§748.936. When must a caregiver complete emergency behavior intervention training?

Each caregiver must complete emergency behavior intervention training within:

(1) Six months from the date that the caregiver last received the training, if the caregiver cares for children at an operation where children receive treatment services; or

(2) 12 months from the date the caregiver last received the training, if the caregiver cares for children in a cottage home.

§748.937. What types of hours or instruction can be used to complete the annual training requirements?

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or Continuing Education Units earned through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences or seminars;

(3) Instructor-led training, as defined at §748.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?);

(4) [(3)] Self-instructional training, as defined at §748.801(4) of this subchapter [excluding training on emergency behavior intervention and CPR];

(5) [(4)] Planned learning opportunities provided by child-care associations or Licensing;

(6) [(5)] Planned learning opportunities provided by a professional contract service provider, child-care administrator, professional level service provider, treatment director, or caregiver who meets minimum qualifications in the rules of this chapter; or

(7) [(6)] Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for required CPR or first-aid certification or required annual training on emergency behavior intervention or psychotropic medication.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another residential child-care operation, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

[(2) Annual emergency behavior intervention training;]

(2) [(3)] First aid and CPR [training];

(3) [(4)] Any hours of pre-service training that the person earned in addition to the required pre-service hours, although you may not carry over more than 15 [10] hours of a person's pre-service training hours for use as annual training hours during the upcoming year;

(4) [(5)] Half of the hours spent developing initial training curriculum that is relevant to the population of children served. No additional credit hours for training curriculum development are permitted for repeated training sessions; and

(5) [(6)] One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Required pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than 80 percent [one-half] of the required annual training hours may come from self-instructional training, as defined at §748.801(4) of this subchapter. No more than three of those self-instructional hours may come from self-study training, as defined at §748.801(5) of this subchapter.

(e) If a person earns more than the minimum number of annual training hours required during a particular year, the person can carry over to the next year a maximum of 15 annual [10] training hours.

§748.939. Does Licensing approve training resources or trainers for annual training hours?

[(a)] [No.] We do not approve or endorse training resources or trainers for training hours.]

[(b) However, you must ensure the employees receive reliable training relevant to the population of children served.]

[(c) Instructor-led training and self-instructional training, excluding self-study training, must include:]

[(1) Specifically stated learning objectives;]

[(2) A curriculum, which includes experiential or applied activities;]

[(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and]

[(4) A certificate, letter, or a signed and dated statement of successful completion from the training source.]

§748.941. How must annual training be conducted?

(a) Instructor-led training and self-instructional training, excluding self-study training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum that includes experiential or applied activities;

(3) An evaluation or assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate, letter, or a signed and dated statement of successful completion from the training source.

(b) Training on emergency behavior intervention and administering psychotropic medication must be instructor-led, as defined at §748.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?).

(c) Training on emergency behavior intervention must:

(1) Be led by an instructor who is certified in a recognized method of emergency behavior intervention or otherwise able to document knowledge of:

(A) Emergency behavior intervention;

(B) The course material;

(C) Methods for delivering the training, including physical techniques for restraints, if applicable; and

(D) The methods for evaluating and assessing a participant's knowledge and competency of the training material and physical techniques, if applicable;

(2) Be competency-based; and

(3) At the end of the training, require each participant to demonstrate knowledge and competency of the training material:

(A) In writing; and

(B) If the general residential operation allows the use of emergency behavior intervention, by demonstrating the physical techniques that the participant may use.

(d) A health-care professional or a pharmacist must lead the training in administering psychotropic medication. The trainer must assess each participant after the training to ensure that the participant has learned the course content.

(e) Training on transportation safety must be instructor led and provided by:

(1) A training provider registered with the Texas Early Care and Education Career Development System's Texas Trainer Registry, maintained by the Texas Head Start Collaboration Office;

(2) An instructor who teaches early childhood development or another relevant course at a secondary school or institution of higher education accredited by a recognized accrediting agency;

(3) An employee of a state agency with relevant expertise;

(4) A physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) A person who holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide; or

(6) A person who has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) Has been awarded a Child Development Associate Credential; or

(B) Holds at least an Associate's Degree in child development, early childhood education, or a related field.

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DIVISION 7. FIRST-AID AND CPR CERTIFICATION

26 TAC §§748.981, 748.983, 748.985, 748.987, 748.989

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeals affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.981. Who must have first-aid and CPR certification?

§748.983. When must a caregiver renew first-aid and CPR certification?

§748.985. Who can provide first-aid and CPR certification?

§748.987. What must the CPR training include?

§748.989. What documentation must I maintain for first-aid and CPR certification?

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DIVISION 8. TOPICS AND CURRICULUM COMPONENTS FOR ANNUAL TRAINING

26 TAC §§748.943 - 748.945, 748.947

STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and

provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections and amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.943. What areas or topics are appropriate for annual training?

(a) Other than the mandated topics, annual training for caregivers must be in areas appropriate to the needs of children for whom the operation or employee will be providing care, which may include:

(1) Developmental stages of children;

(2) Constructive guidance and discipline of children;

(3) Fostering children's self-esteem;

(4) Positive interaction with children;

(5) Strategies and techniques for working with the population of children served;

(6) Supervision and safety practices for children in care;

(7) Preventing the spread of communicable diseases;

(8) Water safety; [or]

(9) Administration of medication; [.]

(10) Medical-related training to help children receiving treatment services for primary medical needs;

(11) Helping children experience grief or loss;

(12) Prevention, recognition, and reporting of child abuse, neglect, and exploitation; or

(13) Safe sleeping, as specified in §748.883 of this subchapter (relating to What curriculum components must be included in the additional general pre-service training for safe sleeping?).

(b) Other than mandated topics, annual training for employees must be in areas appropriate to the needs of children for whom the general residential operation provides care, which may include:

(1) The areas listed in subsection (a) of this section; and

(2) Emergency behavior intervention.

§748.944. What curriculum components must be included in the annual training for normalcy [training]?

(a) The annual training for [regarding] normalcy must include the curriculum components covered in the pre-service training for [regarding] normalcy, see §748.882 of this subchapter [title] (relating to What curriculum components must be included in the pre-service training for [regarding] normalcy?).

(b) Subsequent annual training for [regarding] normalcy should include curriculum that further develops and refines [develop and refine] an employee's knowledge and understanding of normalcy, including how to implement normalcy [and how it should be implemented].

§748.945. What curriculum components must be included in the annual training for administering psychotropic medication?

The annual training for administering psychotropic medication must include the curriculum components identified in §748.885 of this subchapter (relating to What curriculum components must be included in the pre-service training for administering psychotropic medication?).

§748.947. What curriculum components must be included in the annual training for [regarding] emergency behavior intervention [include]?

(a) The annual training for [regarding] emergency behavior intervention must include curriculum components that:

(1) Reinforce [reinforce] basic principles covered in the pre-service training identified in §748.887 of this subchapter [, see §748.901 of this title] (relating to If I do not allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for [regarding] emergency behavior intervention?) and §748.889 [§748.903] of this subchapter [title] (relating to If I allow the use of emergency behavior intervention, what curriculum components must be included in the pre-service training for [regarding] emergency behavior intervention?); [,] and

(2) Develop [develop] and refine the caregiver's [employee's] skills.

(b) You may determine the content of the training based on your evaluation of your emergency behavior interventions.

(c) The training may repeat pre-service training components, including training in the proper use and implementation of emergency behavior intervention.

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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE
DIVISION 1. ADMISSION

26 TAC §748.1211, §748.1217

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 GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.1211. What information must I share with the parent at the time of placement?

(a) At admission, you must provide the following policies to the parent placing the child:

(1) Fee policies;

(2) Emergency behavior intervention policies;

(3) Discipline policies; and

(4) Any other policies required by us, upon request of the parent.

(b) At admission, you must provide and explain the following written information and policies to the parent placing the child:

(1) Information about the policies that you would present a child during orientation;

(2) Your policies regarding the:

(A) Use of volunteers [~~or sponsoring families~~], if applicable;

(B) Type and frequency of notifications made to parents; and

(C) Involvement of the child in any publicity or fundraising [~~and/or fund raising~~] activity for the operation; and

(3) Information about the parent's right to refuse to or withdraw consent for a child to participate in:

(A) Research programs; or [~~and/or~~]

(B) Publicity or fundraising [~~and/or fund raising~~] activities for the operation.

(c) If you sign a placement agreement for a transitional living program with a child as specified in §748.1207 of this title (relating to What is a placement agreement?), then you:

(1) Must share the policies noted in subsection (a) of this section with the child, instead of the parent;

(2) Do not have to comply with subsection (b) of this section, but you must provide and explain to the child your policies regarding the:

(A) Use of volunteers [~~or sponsoring families~~], if applicable;

(B) Involvement of the child in any publicity or fundraising [~~and/or fund raising~~] activity for the operation; and

(C) Child's right to refuse to or withdraw consent to participate in:

(i) Research programs; or [~~and/or~~]

(ii) Publicity or fundraising [~~and/or fund raising~~] activities for the operation; and

(3) Must attempt to notify the child's parent of the child's location, if the child was admitted without the consent of the parent.

§748.1217. What information must an admission assessment include?

(a) An admission assessment must provide an initial evaluation of the appropriate placement for a child and ensure that you obtain the information necessary for you to facilitate service planning.

(b) Prior to a child's non-emergency admission, an admission assessment must be completed which includes:

(1) The child's legal status;

(2) A description of the circumstances that led to the child's referral for substitute care;

(3) A description of the child's behavior, including appropriate and maladaptive behavior, and any high-risk behavior;

(4) Any history of physical, sexual, or emotional abuse or neglect;

(5) Any history of trauma;

(6) [~~(5)~~] Current medical and dental status, including the available results of any medical and dental examinations;

(7) [~~(6)~~] Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment;

(8) [~~(7)~~] The child's current developmental, educational, and behavioral level of functioning;

(9) [~~(8)~~] The child's current educational level and any school problems;

(10) [~~(9)~~] Any applicable requirements of §748.1219 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?);

(11) [~~(10)~~] Documentation indicating efforts made to obtain any of the information in paragraphs (1) - (10) [~~(9)~~] of this subsection, if any information is not obtainable;

(12) [~~(11)~~] The services you plan to provide to the child;

(13) [~~(12)~~] Immediate goals of placement;

(14) [~~(13)~~] The parent's expectations for placement, duration of the placement, and family involvement;

(15) [~~(14)~~] The child's understanding of the placement; and

(16) [~~(15)~~] A determination of whether and how you can meet the needs of the child.

(c) Prior to completing a child's initial service plan, the following information must be added to the admission assessment:

(1) The child's social history. The history must include information about past and existing relationships with the child's birth parents, siblings, extended family members, and other significant adults and children, and the quality of those relationships with the child;

(2) A description of the child's home environment and family functioning;

(3) The child's birth and neonatal history;

(4) The child's developmental history;

(5) The child's mental health and substance abuse history;

(6) The child's school history, including the names of previous schools attended and the dates the schools were attended, grades earned and special achievements;

(7) The child's history of any other placements outside the child's home, including the admission and discharge dates and reasons for placement;

(8) The child's criminal history, if applicable;

(9) The child's skills and special interests;

(10) Documentation indicating efforts made to obtain any of the information in paragraphs (1) - (9) of this subsection, if any information is not obtainable;

(11) The services you plan to provide to the child, including long-range goals of placement;

(12) Recommendations for any further assessments and testing;

(13) A recommended behavior management plan; and

(14) A determination of whether and how you can meet the needs of the child, based on an evaluation of the child's special strengths and needs.

(d) You must attempt to obtain a signed authorization, so you can subsequently request in writing materials from the child's current or most recent placement, such as the admission assessment, professional assessments, and the discharge summary. You must consider information from these materials when you complete your admission assessment if they are made available to you.

(e) This rule does not apply to children receiving emergency care services. See §748.4231 of this chapter [title] (relating to What information must an admission assessment include for a child needing emergency care services, including respite child-care services?).

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DIVISION 3. EDUCATIONAL SERVICES

26 TAC §748.1303

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.1303. What responsibilities do I have for a child's individual educational needs?

You must:

(1) Review report cards and other information received from teachers or school authorities with the child and provide necessary information to caregivers;

(2) Counsel and assist the child regarding adequate classroom performance;

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities to the extent of the child's interests and abilities and in accordance with the child's service plan;

(4) Provide a quiet, well-lighted space for the child to study and allow regular times for homework and study;

(5) Know what emergency behavior interventions are permitted and being used with the child;

(6) Let the parent know that an ARD (Admission, Review, and Dismissal), IEP (Individual Education Plan), or ITP (Individual Transitional Planning) meeting should be requested if you are concerned with the child's educational program or if the child does not appear to be making progress; [and]

(7) Attend ARD, IEP, and ITP meetings and other school staffings and conferences, if requested by the parent, to represent the child's educational best interests, including the child being evaluated for and provided with related services needed to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions; and

(8) Know what is in the child's IEP and support the school's efforts to implement the IEP, if applicable.

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SUBCHAPTER J. CHILD CARE

DIVISION 2. MEDICAL CARE

26 TAC §748.1553

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new section affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.1553. How must a caregiver respond when a child is injured or ill and requires immediate treatment by a health-care professional?

For an injury or illness that requires immediate treatment by a health-care professional, the caregiver must immediately have the child treated by a healthcare professional at the facility, contact emergency services, or take the child to the nearest emergency room after

ensuring the supervision of any other children present. The caregiver must not be required to seek approval to contact emergency services or to take the child to the nearest emergency room.

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

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SUBCHAPTER K. OPERATIONS THAT PROVIDE CARE FOR CHILDREN AND ADULTS
DIVISION 2. GENERAL REQUIREMENTS

26 TAC §748.1937

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeal affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.1937. May an adult in care share a bedroom with a child in care?

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26 TAC §748.1937

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new section affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.1937. May an adult in care share a bedroom with a child in care?

(a) An adult in care may share a bedroom with a child in care if:

(1) They are siblings;

(2) The adult is the child's parent;

(3) Both of them are non-ambulatory and receive treatment services for primary medical needs; or

(4) The child is at least 16 years old, the age difference between them does not exceed 24 months, and the adult meets the requirements of:

(A) §748.1931 of this division (relating to After a child in my care turns 18 years old, may the person remain in my care?); or

(B) §748.1933 of this division (relating to May I admit a young adult into care?).

(b) The following must occur before you may allow an adult in care and a child in care to share a bedroom, unless the adult is the child's parent:

(1) The service planning team must determine that there is no known risk of harm to the child after assessing:

(A) Their behaviors;

(B) Their compatibility with each other;

(C) Their respective relationships;

(D) Any history of possible sexual trauma or sexually inappropriate behavior; and

(E) Any other identifiable factor that may affect the appropriateness of the adult and child sharing a bedroom; and

(2) The service planning team must date and document the assessment and approval in the child's service plan.

(c) The adult and the child must not sleep in the same bed unless the adult is the child's parent, and the child is between the ages of one year and 10 years old.

(d) Subsections (a) and (b) of this section do not apply to travel and camping situations.

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

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SUBCHAPTER L. MEDICATION
DIVISION 1. ADMINISTRATION OF MEDICATION

26 TAC §748.2009

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2009. What are the requirements for administering non-prescription [~~nonprescription~~] medication and supplements?

(a) For non-prescription medications and supplements, you must:

(1) Follow the label instructions for dosage; and

(2) If a health care professional has prescribed other medication, ensure that the non-prescription medication or supplement is not contraindicated with the prescribed medication by consulting with the health care professional about administering the non-prescription medication or supplement:

(A) Before administering the non-prescription medication or supplement for the first time;

(B) Before administering a different dosage of the non-prescription medication or supplement; or

(C) When there is a change to the dosage of a prescription medication or a new medication is prescribed.

[~~(2) Inform the child's prescribing health-care professional of the administration and dosage of any non-prescription medication or supplements to ensure the nonprescription medication and/or supplements are not contraindicated with any other medication prescribed to the child or the child's medical conditions.~~]

(b) You may give nonprescription medication or supplements to more than one child from one container.

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

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SUBCHAPTER M. DISCIPLINE AND PUNISHMENT

26 TAC §748.2307

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2307. What other methods of punishment are prohibited?

In addition to corporal punishment, prohibited discipline techniques include:

(1) Any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment;

(2) Denial of mail or visits with their families as discipline or punishment;

(3) Threatening with the loss of placement as discipline or punishment;

(4) Using sarcastic or cruel humor[~~, and verbal abuse~~];

(5) Maintaining an uncomfortable physical position, such as kneeling, or holding his arms out;

(6) Pinching, pulling hair, biting, or shaking a child;

(7) Putting anything in or on a child's mouth, such as soap or tape;

(8) Humiliating, shaming, ridiculing, rejecting, or yelling at a child;

(9) Subjecting a child to abusive or profane language;

(10) Placing a child in a dark room, bathroom, or closet;

(11) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age;

(12) Confining a child to a highchair, box, or other similar furniture or equipment as discipline or punishment;

(13) Denying basic child rights as discipline or punishment;

(14) Withholding food that meets the child's nutritional requirements; and

(15) Using or threatening to use emergency behavior intervention as discipline or punishment.

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

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SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

DIVISION 3. ORDERS

26 TAC §748.2507

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2507. Under what conditions are PRN orders permitted for a specific child?

(a) PRN orders for certain emergency behavior interventions are permitted under the following conditions:
Figure: 26 TAC §748.2507
[~~Figure: 40 TAC §748.2507~~]

(b) If you obtain a PRN order, you must provide the parent with a copy of the PRN order within 72 hours.

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

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §748.2553

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2553. When must a caregiver release a child from an emergency behavior intervention?

A child must be released as follows:
Figure: 26 TAC §748.2553
[~~Figure: 40 TAC §748.2553~~]

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DIVISION 6. ADDITIONAL RESPONSIBILITIES DURING ADMINISTRATION OF SECLUSION

26 TAC §748.2651

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2651. What are the additional responsibilities for implementing seclusion?

(a) Caregivers must continuously observe the child placed in seclusion. This observation can take place through a window or a one-way mirror. The use of a video camera in lieu of direct observation to continuously observe a child in seclusion is not permitted.

(b) There must be a protected, private, and observable environment or room that safeguards the child's personal dignity and well-being that must:

(1) Have 40 square-feet of floor space and a ceiling height of at least eight feet;

(2) Be free of safety hazards;

(3) Be adequately ventilated during warm weather and adequately heated during cold weather;

(4) Be appropriately lighted; and

(5) Have a mat and bedding, unless the prescribing professional writes orders to the contrary.

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

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DIVISION 9. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

26 TAC §748.2801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2801. What is the maximum length of time that an emergency behavior intervention can be administered to a child?

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:
Figure: 26 TAC §748.2801
[~~Figure: 40 TAC §748.2801~~]

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

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DIVISION 10. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §748.2857

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new section affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2857. What notice must I provide to the parent when I use an emergency behavior intervention with a child in care?

(a) As soon as possible, but no later than 72 hours after the initiation of the intervention, you must provide written notice to the parent that includes:

(1) The child's name;

(2) The specific emergency behavior intervention administered;

(3) The length of time the child was restrained;

(4) The child's condition following the use of the medication or release from the intervention, including:

(A) Any injury the child sustained as a result of the intervention or any adverse effects caused by using the intervention; and

(B) If the child received medical assistance or treatment, the name of each person who provided the medical assistance or treatment;

(5) If a personal restraint was used, the specific restraint techniques used, including if a prone or supine restraint used as a transitional hold; and

(6) If emergency medication was used, the specific medication used, and the dosage administered to the child.

(b) A copy of the documentation provided to the parent must be maintained in the child's record.

(c) This rule does not apply to short personal restraints.

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

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DIVISION 12. OVERALL OPERATION EVALUATION

26 TAC §748.2953

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.2953. What data must be collected?

(a) Quarterly, you must collect, document, and review aggregate numbers of emergency behavior interventions by type of intervention, with the exception of short personal restraints.

(b) This information must be reported to us no later than 15 days after the end of each quarter [~~quarterly~~].

(c) You must maintain the data for five years.

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SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES
DIVISION 7. FIRST-AID KITS

26 TAC §748.3273

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3273. What must each first-aid kit contain?

Each first-aid kit must contain at least the following supplies:

(1) A current guide to first aid and emergency care;

(2) Adhesive tape;

(3) Antiseptic solution or wipes;

[~~(4) Cotton balls;~~]

(4) [~~(5)~~] Adhesive [~~Multi-size adhesive~~] bandages;

(5) [~~(6)~~] Scissors;

(6) [~~(7)~~] Sterile gauze pads;

(7) [~~(8)~~] Thermometer;

(8) [~~(9)~~] Tweezers; and

(9) [~~(10)~~] Waterproof, disposable gloves.

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

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DIVISION 8. PRODUCT SAFETY

26 TAC §748.3281, §748.3283

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3281. When is a product considered unsafe?

A product is considered unsafe if, after it has been recalled for any reason by the United States Consumer Product Safety Commission:

(1) The recall has not been rescinded; and

(2) The product has not been made safe through being remanufactured or retrofitted.

§748.3283. What are my responsibilities regarding unsafe products at my operation?

(a) You are responsible for reviewing the United States Consumer Product Safety Commission (CPSC) recall list. You may view all current and past recalls through the CPSC's Internet website at www.cpsc.gov. You must ensure that there are no unsafe products at your operation unless one or more of the following apply:

(1) The product is an antique or collectible and is not used by, or accessible, to any child; or

(2) The unsafe product is being retrofitted to make it safe and the product is not used by, or accessible, to any child.

(b) You are responsible for ensuring that no unsafe products are at the operation. You must post a notice for parents and employees in a prominent and publicly accessible place that includes information on how to access a listing of unsafe products through the CPSC Internet website or through the Texas Health and Human Services Internet website.

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

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SUBCHAPTER P. PHYSICAL SITE
DIVISION 1. GROUNDS AND GENERAL REQUIREMENTS

26 TAC §748.3301

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3301. What general physical site requirements must my operation meet?

(a) Buildings, including exterior and interior surfaces (such as walls, floors, and ceilings), must:

(1) Be [be] structurally sound[, ~~clean,~~] and not pose a risk to the health and safety of children;

(2) Be clean and in good repair; and [.]

(3) Comply with applicable building, plumbing, electrical, fire, and similar codes.

(b) Paints used at the operation after January 1, 2007, must be lead-free.

[~~(b) Buildings must comply with applicable building, plumbing, electrical, fire, and similar codes.~~]

(c) Windows and doors must be in good repair and free of broken glass or hazards. Windows used for ventilation, including windows in doors, must be provided with properly fitted and secure screens in good repair for protection from insects when windows are open.

(d) Walkways must be free of ice, snow, and obstruction.

(e) Outdoor areas must be well drained.

(f) The grounds of the operation must be well maintained and free of hazards.

(g) The grounds of the operation must be free of accumulation of garbage and debris and maintained in a sanitary manner. All garbage must be disposed of in a sanitary manner in accordance with the Texas Commission on Environmental Quality (see 30 TAC Chapter 330, Municipal Solid Waste). Outdoor garbage cans must have lids.

(h) The building must be free of rodents and insects.

(i) Equipment and furniture must be safe for children and must be kept clean and in good repair.

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

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DIVISION 2. INTERIOR SPACE

26 TAC §748.3361, §748.3363

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Pro-

tective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment and new section affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3361. May a child in care share a bedroom with an adult caregiver?

(a) Generally, each child should have the child's [~~his~~] own designated bedroom or share a bedroom with other children.

(b) A child may share a bedroom with an adult caregiver if:

(1) It is in the best interest of the child;

(2) The child is under three years old and sleeps in the bedroom of the caregiver; and

(3) The service planning team dates and documents the approval [~~Approval is documented and dated~~] in the child's service plan [~~by the service planning team~~].

[~~(c) To determine whether a child should share a bedroom with an adult resident, see §748.1937 of this title (relating to May an adult in care share a bedroom with a child in care?).~~]

(c) [~~(d)~~] A child must [~~Children may~~] not sleep in the same bed with an adult caregiver at any time.

(d) [~~(e)~~] Subsections (a) and (b) [- ~~(c)~~] of this section do not apply to travel and camping situations.

§748.3363. May children of opposite genders share a bedroom?

(a) A child six years old or older must not share a bedroom with a child of the opposite gender, unless:

(1) They are siblings;

(2) The older child is the younger child's parent; or

(3) Both children are non-ambulatory and receive treatment services for primary medical needs.

(b) The following must occur before you may allow children of the opposite gender to share a bedroom, unless the older child is the younger child's parent:

(1) The service planning team must determine that there is no known risk of harm to either of the children after assessing:

(A) Their behaviors;

(B) Their compatibility with each other;

(C) Their respective relationships;

(D) Any history of possible sexual trauma or sexually inappropriate behavior; and

(E) Any other identifiable factor that may affect the appropriateness of the children sharing a bedroom.

(2) The service planning team must date and document the assessment and approval in each child's service plan.

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

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26 TAC §748.3363

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeal affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3363. May children of opposite genders share a bedroom?

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

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DIVISION 4. POISONS

26 TAC §748.3421

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3421. What are the requirements for protecting children from poisonous or flammable material?

You must ensure that poisonous or flammable materials are:

(1) Stored in their original, labeled containers;

(2) Kept separate from medication, food, food preparation surfaces, and dining surfaces;

(3) Stored in an area that is inaccessible [Inaccessible] to children, unless caregivers have evaluated a child as capable and likely to use such items responsibly; and

(4) Cleaned up immediately when spilled.

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DIVISION 5. FOOD PREPARATION, STORAGE, AND EQUIPMENT

26 TAC §748.3443

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3443. What are the requirements for storing food?

(a) All food items must be:

(1) Covered and stored off the floor;

(2) Stored on clean surfaces;

(3) Protected from contamination;

(4) Stored in a container that is protected from insects and rodents;

(5) Stored in the refrigerator [Refrigerated immediately after use and after meals], if the food requires refrigeration; and

(6) Covered when stored in the refrigerator.

(b) You must have a thermometer in refrigerators and freezers and store:

(1) Refrigerated food at 40 degrees Fahrenheit or below; and

(2) Frozen food at 0 degrees Fahrenheit or below.

(c) Subsection (b) of this section does not apply to cottage homes.

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

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For further information, please call: (512) 438-3269

DIVISION 9. SWIMMING POOLS, WADING/SPLASHING POOLS, AND HOT TUBS

26 TAC §748.3601, §748.3603

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 GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3601. What are the requirements for swimming pools that a child uses?

If a swimming pool with more than two feet of water is used in an activity sponsored by you, then the swimming pool, either at or away from your operation, must meet the following criteria:

(1) At least two life-saving devices must be available, such as a reach pole, backboard, buoy, or a safety throw bag with a brightly colored buoyant rope or throw line;

(2) One additional life-saving device must be available for each 2,000 square feet of water surface, so a pool of 2,000 square feet would require three life saving devices;

(3) Drain grates, vacuum outlets, and skimmer covers must be in place;

(4) Pool chemicals and pumps must be inaccessible to all children;

(5) Machinery rooms must be locked when any child is present;

(6) All parts of the swimming pool, including the bottom of the pool, must be clearly visible during the use of the pool;

[(7) The bottom of the pool must be visible during the use of the pool;]

(7) [(8)] Pool covers must be completely removed prior to pool use and must not present an entrapment hazard; and

(8) [(9)] Swimming area rules and emergency procedures must be posted at the swimming area and explained to the children.

§748.3603. What are the additional requirements for a swimming pool located at my operation?

(a) The swimming pool must be built and maintained according to the standards of the Department of State Health Services and any other applicable state or local regulations.

(b) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a swimming pool.

(c) If the swimming pool is aboveground, it must meet all swimming pool safety requirements specified in this subchapter and have a barrier that prevents a child's unauthorized access to the swimming pool.

(d) Outdoor swimming pools must be enclosed with a six-foot fence or wall that prevents children's access to the swimming pool. It must be constructed[,] so that the fence or wall does not obscure the swimming pool from view.

(e) Doors, operable windows, or gates of living quarters must not be part of the swimming pool enclosure for outdoor swimming pools.

(f) Fence gates leading to the outdoor swimming pool area must have self-closing and self-latching hardware located at least 60 inches from the ground and must be locked when the swimming pool is not in use. An indoor swimming pool must be secured at all times to prevent children's access to the swimming pool when a lifeguard is not on duty.

(g) Fence gates must open outward away from the swimming pool and must not be propped open.

(h) The space between the ground and the bottom of the fence must not exceed four inches.

(i) When a fence is made of horizontal and vertical slats, the horizontal slats must be located on the swimming pool side of the fence.

(j) Doors from the operation leading to the swimming pool area must have a lock that can only be opened by an adult, unless: [.]

(1) the state or local fire authority determines that the height of the lock violates or would violate the fire code; and

(2) you have documentation of the fire authority's determination on file.

(k) The doors and fence gates leading to or through the swimming pool area must not be designated as fire and emergency evacuation exits.

(l) The drain grates, vacuum outlets, and skimmer covers that must be in place, must also be in good repair, and not be able to be removed without using tools.

(m) All indoor/outdoor areas within 50 feet outside of the fence around the swimming pool must be free of furniture and equipment that a child could use to gain unauthorized access to the swimming pool [enter the pool area by scaling a fence or barrier or releasing a lock].

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

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SUBCHAPTER Q. RECREATION ACTIVITIES
DIVISION 2. SWIMMING ACTIVITIES

26 TAC §748.3757

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3757. What are the child/adult ratios for swimming activities?

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:
Figure: 26 TAC §748.3757(a)
[Figure:40 TAC §748.3757(a)]

(b) When all of the children in the group are at least four years of age or older, in addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, at least two adults must supervise four or more children who are actually in the water.

(c) When a child who is non-ambulatory or who is subject to seizures is engaged in swimming activities, you must assign one adult to that one child. This adult must be in addition to the lifeguard on duty in the swimming area. You do not have to meet this requirement if a licensed physician writes orders in which the physician determines that the child:

(1) Is at low risk of seizures and that special precautions are not needed; or

(2) Only needs to wear a Coast Guard [an] approved life jacket while swimming and additional special precautions are not needed.

(d) A child must wear a Coast Guard approved life jacket while participating in swimming activities in other bodies of water such as ponds, rivers, lakes and oceans if the child is:

(1) Under the age of 12; or

(2) Unable to swim, regardless of the child's age.

(e) So long as you comply with the child/caregiver ratios required in §748.1003 of this title, the ratios in subsection (a) of this section:

(1) Do not include children over the age of 12 years old who are competent swimmers; and

(2) Are not required when children are participating in water activities such as sprinkler play or splash pad or wading pool, as long as the standing water is less than two feet deep.

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

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DIVISION 6. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

26 TAC §748.3931

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.3931. Are weapons, firearms, explosive materials, and projectiles permitted at my operation?

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows) are permitted; however, there are some specific restrictions:

(1) A handgun is a type of firearm that is never [Handguns are not] permitted at an operation or during any type of activity;

(2) A child receiving treatment services or emergency care services is not permitted to use weapons, firearms, explosive materials, or projectiles [, or toys that explode or shoot (such as fireworks or BB guns)];

(3) If you allow weapons, firearms, explosive materials, or projectiles, [or toys that explode or shoot,] you must develop and enforce a policy identifying specific precautions to ensure that a child does not have unsupervised access to them [ensure children do not have unsupervised access to them by implementing specific precautions outlined in your polices], including: [locked storage and separate locked storage for the weapons and ammunition;]

(A) Weapons, firearms, the ammunition, explosive materials, and projectiles must be kept in locked storage;

(B) The locked storage must be made of strong, unbreakable material, except that the storage may have a glass or another breakable front or enclosure;

(C) Any gun placed in a locked storage that has a glass or another breakable front or enclosure must be secured with a locked cable or chain placed through the trigger guard; and

(D) Weapons and ammunition must be separately stored and locked;

(4) You must determine it is appropriate for a child receiving only child-care services to use the weapons, firearms, explosive materials, or projectiles [, or toys that explode or shoot]; and

(5) No child may use a weapon, firearm, explosive material, or projectile, [or toy that explodes or shoots,] unless the child is directly supervised by an adult knowledgeable about the use of the weapon, firearm, explosive material, or projectile that is to be used by the child. [a qualified adult. A qualified adult must hold a generally recognized credential or possess documented knowledge and/or experience in the type of the weapon, firearm, explosive material, projectile, or toy that explodes or shoots that is to be used by the child.]

(b) A child receiving treatment services or emergency care services is not permitted to use toys that explode or shoot. For a specific child receiving only child-care services, you must determine whether it is appropriate for that child to use toys that explode or shoot. The child must be supervised when using or being around toys that explode or shoot, and the toy must be age appropriate to the child.

(c) Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

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

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SUBCHAPTER R. TRANSPORTATION
DIVISION 1. GENERAL REQUIREMENTS

26 TAC §748.4001

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the GRO and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§748.4001. What types of transportation does Licensing regulate?

[~~(a)~~] We regulate any transportation that you provide for trips away from and to your operation.

~~[(b) You must ensure the safety of all children during any transportation that you provide.]~~

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

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§749.43, 749.105, 749.305, 749.503, 749.511, 749.635, 749.675, 749.761, 749.801, 749.868, 749.931, 749.935, 749.1113, 749.1133, 749.1135, 749.1469, 749.1801, 749.1893, 749.1957, 749.2001, 749.2107, 749.2153, 749.2281, 749.2383, 749.2485, 749.2493, 749.2903, 749.2904, 749.2905, 749.2961, 749.2967, 749.3027, 749.3133, 749.3137, 749.3391, 749.3395, 749.3503, 749.4155, and 749.4267; new §§749.1437, 749.2307, 749.3025, 749.3029, and 749.3043; and repeals to §§749.2471, 749.2553, 749.2563, 749.2565, 749.2566, 749.2567, 749.2827, 749.3025, and 749.3029 in Title 26, Texas Administrative Code (TAC), Chapter 749, Minimum Standards for Child-Placing Agencies.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Texas Human Resources Code (HRC) §42.042(b), which requires Child Care Regulation (CCR), a division of HHSC, to conduct a comprehensive review of all minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 749. In addition, the purpose of some of the proposed changes are to implement sections of statute that were amended by House Bill (H.B.) 700, H.B. 1387, and H.B. 1927, 87th Texas Legislature, Regular Session, 2021.

During the review of standards, CCR's goal was to balance the concerns of child advocacy groups, Child Placing Agencies (CPAs), foster parents, children, and parents to ensure that standards in Chapter 749 promote the health, safety, and welfare of children in care and meet other requirements described in HRC §42.042(e).

In preparation for the review of minimum standards, CCR conducted a web-based survey to solicit feedback from permit holders, licensed administrators, caregivers, advocates, parents, CCR staff, and the general public. The survey was available September 4 - 19, 2019. During the next step in the review, CCR held a series of nine stakeholder forums throughout the state, in February and March 2020. Additional stakeholder forums were held virtually online from July 31 to August 7, 2020. During these forums, CCR presented the survey results and solicited additional input from the public about possible changes to the minimum standards CCR was considering based upon the survey results.

CCR used the input obtained through the survey, stakeholder forums, and a review of all minimum standards conducted by both regional and State Office CCR staff as the basis of the first round of recommendations for changes to minimum standards. The recommendations were presented on January 8, 2021, to a temporary workgroup that comprised 26 invited participants, including providers from CPAs and representatives from CCR, the Texas Department of Family and Protective Services (DFPS) Child Protective Services division, and the DFPS Residential Contracts division. The workgroup reviewed and provided additional comments regarding the recommendations.

CCR used all the feedback received to draft proposed changes to the rules for informal public comment. CCR received 69 comments during the informal comment period on July 12 through August 6, 2021. CCR carefully considered the comments when drafting rules for formal comment.

In addition to this consideration, this proposal also includes rules that CCR drafted to implement sections of statute amended by H.B. 700, H.B. 1387, and H.B. 1927. H.B. 700 adds §264.1214(c) to the Texas Family Code to allow an adult in care to share a bedroom with a child in care who is at least 16 years old and the age difference is not more than 24 months. H.B. 1387 amends HRC §42.042(e-1) to allow foster homes to store their firearms and ammunition in the same locked location without trigger locks. H.B. 1927 amends HRC §42.042(e-2) to allow a foster parent to transport a foster child in the same vehicle as a handgun if the foster parent "is not otherwise prohibited by law from carrying a handgun," which replaces the current requirement that the foster parent be "licensed to carry" a handgun.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.43 (1) adds the terms "babysitter," "babysitting," "contract service provider," "employee," "foster care," "normalcy," "overnight care provider," "residential child-care operation," and "single source continuum contractor", and their respective definitions for the chapter; (2) clarifies the definitions for the terms "caregiver," "chemical restraint," "foster family home," "health-care professional," "mechanical restraint," "overnight care," "parent," "school-age child," "seclusion," "swimming activities," and "volunteer"; (3) deletes the terms "foster group home" and "foster home" and their respective definitions; and (4) renumbers the subsections and makes other non-substantive changes.

The proposed amendment to Division 1 of Subchapter C makes a small change to the division's title.

The proposed amendment to §749.105 clarifies that an employee must report suspected abuse, neglect, or exploitation directly to the Texas Abuse and Neglect Hotline and may not delegate this responsibility or be required to seek approval to file a report.

The proposed amendment to §749.305 (1) deletes a reference to a "foster group home"; and (2) makes non-substantive changes.

The proposed amendment to §749.503 (1) updates the rule to require a CPA to notify CCR and the parent as soon as possible, but no later than two hours after a child's death; (2) clarifies

what type of "alleged incident" involving a child and law enforcement that a CPA needs to report; (3) indicates that a CPA must notify parents as soon as possible or within 24 hours after becoming aware of a child being issued a ticket or citation without being detained; (4) renumbers several of the paragraphs in subsection (a); (5) deletes "such as a seizure" in subsection (b), so that a seizure is not used as an example to describe a medically pertinent incident that does not rise to the level of a serious incident; (6) corrects references in subsection (c); (7) clarifies that law enforcement needs to be notified if an adult resident dies, but there are no other requirements to notify law enforcement concerning adult residents; (8) replaces "parents" with "legally authorized representative" in subsection (d); (9) clarifies in subsection (e) that the Child Care Investigations division of the Texas Department of Family and Protective Services investigates child abuse or neglect, not CCR; (10) clarifies that CCR must be notified if law enforcement executes a warrant; (11) updates the time frame for notifying CCR of situations described in paragraph (e)(6); (12) adds requirements to notify CCR and parents when there is an allegation that an employee or caregiver used a prohibited emergency behavior intervention (EBI), a prohibited restraint technique, or an EBI inappropriately as outlined in specific rules; and (13) makes non-substantive changes to improve understanding and readability.

The proposed amendment to §749.511 clarifies that any update regarding an unauthorized absence, including a child's return to the operation, must be documented in the incident report.

The proposed amendment to §749.635 adds compliance with current heightened monitoring plans, if applicable, to the list of child-placing agency administrator responsibilities.

The proposed amendment to §749.675 (1) clarifies that experience as a Child Protective Services caseworker with the Texas Department of Family and Protective Services may be counted to meet the qualifications to perform child placement management activities; and (2) corrects the title in the figure.

The proposed amendment to §749.761 clarifies that a volunteer must not be required to obtain approval to report suspected abuse, neglect, or exploitation.

The proposed amendment to §749.801 (1) clarifies the definitions of the terms "self-instructional training" and "self-study training"; (2) deletes the terms and definitions for "single source continuum contractor" and "normalcy" since they are relocating to §749.43; and (3) makes non-substantive changes.

The proposed amendment to §749.868 adds a requirement for the CPA to document any determination that a waiver of pre-service training is appropriate for a foster parent and any re-evaluation of the foster home due to changes to the ages or number of children the home can care for or the types of services the home can provide.

The proposed amendment to §749.931 corrects the standard in order to align it with HRC §42.04261 so that an executive director must annually receive training on preventing, recognizing, and reporting child abuse, neglect, and exploitation.

The proposed amendment to §749.935 (1) corrects references in subsections (a) and (d); and (2) makes non-substantive changes.

The proposed amendment to §749.1113 (1) removes references to "sponsoring families;" and (2) makes non-substantive changes.

The proposed amendment to §749.1133 (1) requires the child's educational and behavioral level of functioning and any history of trauma be evaluated as part of an admission assessment prior to a child's non-emergency admission; and (2) renumbers the paragraphs and corrects references accordingly.

The proposed amendment to §749.1135 (1) clarifies that an admission assessment for a child with primary medical needs must include an evaluation by a health-care professional; and (2) makes non-substantive changes.

Proposed new §749.1437 (1) outlines what a caregiver must do when a child is injured or ill and requires immediate treatment by a health-care professional; and (2) clarifies that a caregiver must not be required to seek approval to contact emergency services or to take the child to the nearest emergency room.

The proposed amendment to §749.1469 clarifies procedures for ensuring a non-prescription medication or supplement is not contraindicated with any other medication prescribed to a child.

The proposed amendment to §749.1801 adds the term "restrictive device" and its definition for Division 1 of Subchapter K.

The proposed amendment to §749.1893 (1) clarifies that caregivers should know the specifics of a child's Individual Education Plan (IEP) and support the school's efforts to implement the IEP, if applicable; and (2) makes non-substantive changes.

The proposed amendment to §749.1957 deletes "and verbal abuse" from subsection (4) because it is already covered under subsections (8) and (9).

The proposed amendment to §749.2001 deletes "or mechanical restraint" from the definition of a transitional hold.

The proposed amendment to §749.2107 (1) adds a requirement to provide the parent with a copy of the PRN order within 72 hours of obtaining a PRN order for a personal restraint or emergency medication; and (2) makes non-substantive changes.

The proposed amendment to §749.2153 and §749.2281 clarifies that a prone or supine hold is meant to be transitional.

Proposed new §749.2307 adds requirements to notify the parent when the operation has used an emergency behavior intervention, other than a short personal restraint, with the parent's child.

The proposed amendment to §749.2383 clarifies that a CPA must submit aggregate numbers of emergency behavior interventions to CCR no later than 15 days after the end of each quarter.

The proposed amendment to Division 3 of Subchapter M makes small changes to that division's title.

The proposed repeal of §§749.2471, 749.2553, 749.2563, 749.2565, 749.2566, 749.2567, and 749.2827 deletes standards that relate to foster group homes.

The proposed amendment to §§749.2485, 749.2493, 749.2903, and 749.2904 removes references to a foster group home.

The proposed amendment to §749.2905 (1) removes a reference to a foster group home; and (2) clarifies that child placement staff may use the State Fire Marshal's checklist for foster homes and it is current for one year.

The proposed amendment to §749.2961 (1) implements HRC §42.042, which was amended by H.B. 1387 and H.B. 1927, by making extensive changes to the requirements regarding the storage of weapons, firearms, explosive materials, and projec-

tiles; (2) clarifies that a toy that explodes or shoots must be age appropriate to the child; and (3) reorganizes the rule content and makes other non-substantive changes.

The proposed amendment to §749.2967 implements HRC §42.042(e-2), which was amended by H.B. 1927, to allow a foster parent to transport a child in the same vehicle as a handgun as long as the foster parent is not otherwise prohibited by law from carrying a handgun.

The proposed repeal of §749.3025 deletes the rules as no longer necessary, because the content of the rule is being added to proposed new §749.3025 with substantive changes.

Proposed new §749.3025 (1) incorporates the proposed repeal of §749.3025; (2) adds four situations when an adult in care may share a bedroom with a child in care: (A) when they are siblings; (b) when the adult is the child's parent; (C) when they are both non-ambulatory and receive treatment services for primary medical needs; and (D) when an adult in care shares a bedroom with a child in care is at least 16-years old and the age difference is not more than 24 months, which implements H.B. 700 from the 87thTexas Legislature, Regular Session, 2021, Family Code §264.1214(c); (3) clarifies that the service planning team must complete and document an assessment determining that there is no known risk to the child sharing a room with an adult by looking at certain factors, except when the adult is the child's parent; (4) clarifies that the factors to be assessed include the children's behavior, compatibility, relationship, any history of possible sexual trauma or sexually inappropriate behavior, and any factors affecting the appropriateness of the children sharing a bedroom; and (5) includes an exception for traveling and camping situations.

The proposed amendment to §749.3027 updates the language of the rule for better readability and understanding.

The proposed repeal of §749.3029 deletes the rule as no longer necessary, because the content of the rule is being added to proposed new §749.3029 with substantive changes.

Proposed new §749.3029 (1) incorporates the proposed repeal of §749.3029; (1) adds an additional situation when children of opposite gender may share a bedroom to include when they are siblings; (2) clarifies that the service planning team must complete and document an assessment determining that there is no known risk to each child by looking at certain factors, except when the older child is the younger child's parent; and (3) clarifies that the factors to be assessed include the children's behavior, compatibility, relationship, any history of possible sexual trauma or sexually inappropriate behavior, and any factors affecting the appropriateness of the children sharing a bedroom.

Proposed new §749.3043 (1) describes an unsafe product as it is determined by the United States Consumer Product Safety Commission; and (2) outlines the caregiver's responsibilities for ensuring there are no unsafe products at the foster home.

The proposed amendment to §749.3133 (1) adds a subsection to clarify that the barrier, which includes a fence or wall, must prevent a child's unauthorized access to a swimming pool and may not include a swimming pool cover unless it is a power safety cover that meets the specifications of the American Society for Testing Materials; (2) clarifies that the back wall of a house may serve as one side of the fence or wall that encloses the pool area; (3) clarifies that locks, in additional to keys, for any fence gate leading to the outdoor pool area must not be accessible to children under the age of 12 years old; (4) adds a requirement for a door alarm if the home serves as one side of the fence or wall and clarifies that the door lock must only be accessible to adults and children over 12 years of age; (5) clarifies that the foster home is not required to have a lock on doors leading to the swimming pool area that an adult can open if the state or local fire authority determines that the height of the lock violates or would violate the fire code and documentation from the state or local fire authority is kept in the foster home record; and (6) makes non-substantive changes for better understanding.

The proposed amendment to §749.3137 (1) clarifies that life jackets must be Coast Guard approved; (2) adds a subsection requiring a child under the age of 12 or a child of any age who cannot swim to wear a Coast Guard-approved life jacket when swimming in other bodies of water, such as ponds, rivers, lakes, and oceans; (3) clarifies that the swimming ratios do not apply to (A) children over 12 years of age who are competent swimmers, regardless of the type of body of water and (B) children of any age who are participating in sprinkler play or are playing in a splash pad or wading pool that has standing water less than two feet; (4) deletes references to a foster group home; and (5) makes non-substantive changes.

The proposed amendment to §749.3391 (1) corrects the standard to make it consistent with §162.005 of Texas Family Code; and (2) makes non-substantive changes.

The proposed amendment to §749.3395 and §749.3503 supports the changes made to §749.3391.

The proposed amendment to §749.4155 (1) corrects the title and references in the figure; and (2) removes training requirements for foster group homes.

The proposed amendment to §749.4267 (1) corrects a reference to another rule; and (2) clarifies the language for better readability and understanding.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand and repeal existing rules;

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

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

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

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities that are Child-Placing Agencies (CPAs) because the only requirement to expend funds is the door alarm on any home interior's door leading to a pool enclosure required by proposed TAC §749.3133 and that cost would be borne by the Foster Parents. There are no rural communities licensed to provide child-placing services. Foster Parents receive reimbursement for their services and do not make a profit; therefore, they are not small-businesses or micro-businesses.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules: (1) are necessary to protect the health, safety, and welfare of the residents of Texas; and (2) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be: (1) an enhancement in child health and safety; (2) an improvement in quality of care; and (3) increased compliance with statutory requirements due to clearer wording and the streamlining of rules that will help providers' understanding.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because of the door alarm required by proposed TAC §749.3133. According to proposed §749.3133, any foster home that serves as one side of a fence or wall surrounding a swimming pool must have a door alarm for any door leading to the swimming pool area. HHSC conducted research online and determined that a door alarm is expected to have an average cost cost of $90.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R103" in the subject line.

SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

26 TAC §749.43

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.43. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

(2) Adaptive functioning--Refers to how effectively a person copes with common life demands and how well the person meets standards of personal independence expected of someone in his particular age group, socio-cultural background, and community setting.

(3) Adoption record--All information received by the child-placing agency that bears the child's name or pertains to the child, including any information about the birth parents and adoptive parents, is considered to be part of the adoption record.

(4) Adoptive home screening--Also known as a pre-adoptive home screening. A written evaluation, prior to the placement of a child in an adoptive home, of the:

(A) Prospective adoptive parents [parent(s)];

(B) Family of the prospective adoptive parents; and

(C) Environment of the adoptive parents and their family in relation to their ability to meet the needs of a child, and if a child has been identified for adoption, the needs of that particular child.

(5) Adult--A person 18 years old or older.

(6) Adverse action--See corrective or adverse action.

(7) Babysitter [Babysitting]--A person who temporarily cares [Temporarily caring] for a child in foster care for no more than 12 consecutive hours. A babysitter is not required to meet the requirements for a caregiver unless the babysitter is a verified foster parent, an agency employee, a contract service provider, or a volunteer.

(8) Babysitting--Care provided by a babysitter.

(9) [(8)] Caregiver--A caregiver:

(A) Is a person counted in the child/caregiver ratio for foster care services, including employees, foster parents, contract service providers, and volunteers, whose duties include direct care, supervision, guidance, and protection of a child in care. This includes any person who [that] is solely responsible for a child in foster care. For example, a child-placement staff that takes a foster child on an appointment or doctor's visit is considered a caregiver;

(B) Does not include a babysitter [babysitters], an overnight care provider [providers], or a respite child-care provider [providers] unless the person is [they are]:

(i) A verified [Verified] foster parent [parents];

[(ii) Licensed foster parents; or]

(ii) [(iii)] An agency employee [Agency employees];

(iii) A contract service provider; or

(iv) A volunteer.

(C) Does not include a contract service provider who:

(i) Provides a specific type of service to your agency for a limited number of hours per week or month;

(ii) Works with one particular child; or

(iii) Is a nurse being reimbursed by Medicaid; [and]

(D) Does not include a person left alone momentarily with a child in care while the caregiver leaves the room; and

(E) Does not include an adoptive parent.

(10) [(9)] Certified fire inspector--Persons certified by the Texas Commission on Fire Protection to conduct fire inspections.

(11) [(10)] Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(12) [(11)] Chemical restraint--A prohibited type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of a medication is not a chemical restraint under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for medical or dental reasons; and

(C) Has a secondary effect of immobilizing or sedating a child.

(13) [(12)] Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §749.2605 of this chapter [title] (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(14) [(13)] Child in care--A child who has been placed by a child-placing agency in a foster or adoptive home, regardless of whether the child is temporarily away from the home. Unless a child has been discharged from the child-placing agency, the child is considered a child in care.

(15) Contract service provider--A person or entity that is contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(16) [(14)] Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership," [,] which is defined separately.

(17) [(15)] Corrective or adverse action--Is any action by you that places a restriction or condition on a foster home's verification, including the revocation of the verification. Note: For information regarding a corrective or adverse action which Licensing is taking against you, see Subchapter L of Chapter 745 (relating to Enforcement Actions).

(18) [(16)] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(19) [(17)] Days--Calendar days, unless otherwise stated.

(20) [(18)] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(21) [(19)] Department--The Texas Department of Family and Protective Services (DFPS).

(22) [(20)] Discipline--A form of guidance that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

(23) [(21)] Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(24) [(22)] Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of a medication is not an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for a medical or dental reason (e.g. Benadryl [~~benadryl~~] for an allergic reaction or medication to control seizures); and

(C) Has a secondary effect of modifying a child's behavior.

(25) [~~(23)~~] Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial physical injury to the child because the child attempts or continually threatens to commit suicide or substantial physical injury; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(26) Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. For the purposes of this chapter, employees include all child-placing agency staff and any owner who is present at the operation or a foster home or transports any child in care.

(27) [~~(24)~~] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(28) Foster care--Care that is provided to a foster child by a foster family home.

(29) [~~(25)~~] Foster family home--A home that is the primary residence of the foster parent(s) and provides care for six or fewer children or young adults, under the regulation of a child-placing agency. Also referred to as a "foster home" in this chapter.

[~~(26) Foster group home--A home verified:~~]

[~~(A) After January 1, 2007, that is the primary residence of the foster parent(s) and provides care for seven to 12 children or young adults, under the regulation of a child-placing agency; or~~]

[~~(B) Prior to January 1, 2007, that provides care for seven to 12 children or young adults, under the regulation of a child-placing agency.~~]

[~~(27) Foster home--As referred to in this chapter means both types of homes, foster family homes and foster group homes.~~]

(30) [~~(28)~~] Foster home screening--A written evaluation, prior to the verification of the foster home, of the:

(A) Prospective foster parent(s);

(B) Family of the prospective foster parent(s);

(C) All other part- or full-time household members; and

(D) Environment of the foster parent(s) and their family in relation to their ability to meet the child's needs.

(31) [~~(29)~~] Foster parent--A person verified to provide child-care services in the foster home.

(32) [~~(30)~~] Full-time--At least 30 hours per week.

(33) [~~(31)~~] Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the child-placing agency.

(34) [~~(32)~~] Health-care professional--A licensed physician, licensed advanced practice registered nurse (APRN), physician's assistant, licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's license. This does not include physicians, nurses, [~~medical doctors~~] or other medical personnel not licensed to practice in the United States or in the country in which the person practices.

(35) [~~(33)~~] High-risk behavior--Behavior of a child that creates an immediate safety risk to the child or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse, fire setting, and sexual aggression or perpetration.

(36) [~~(34)~~] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(37) [~~(35)~~] Immediate danger to self or others--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury to self or others, or the probability of bodily harm resulting from a child running away. Immediate danger does not include:

(A) Harm that might occur over time or at a later time; or

(B) Verbal threats or verbal attacks.

(38) [~~(36)~~] Infant--A child from birth through 17 months.

(39) [~~(37)~~] Master record--The compilation of all required records for a specific person or home, such as a master personnel record, master case record for a child, or a master case record for a foster or adoptive home.

(40) [~~(38)~~] Mechanical restraint--A prohibited type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(41) [~~(39)~~] Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(42) [~~(40)~~] Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(43) [~~(41)~~] Non-mobile--A child that is not able to move from place to place, even with assistance.

(44) Normalcy--See §749.2601 of this chapter (relating to What is "normalcy"?).

(45) Overnight care--Care provided by an overnight care provider.

(46) [~~(42)~~] Overnight care provider--A person who temporarily cares [~~Temporary care provided~~] for a child in foster care [~~by someone other than the foster parents with whom the child is placed~~] for more than 12 consecutive hours, but no more than 72 consecutive hours.

(47) [~~(43)~~] Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns a child-placing agency.

(48) [~~(44)~~] Parent--A person or entity that [~~who~~] has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian of the child or a legally authorized representative of an entity with that status.

(49) [~~(45)~~] Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(50) [~~(46)~~] Permit holder--The owner of the child-placing agency that is granted the permit.

(51) [~~(47)~~] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(52) [~~(48)~~] Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(53) [~~(49)~~] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(54) [~~(50)~~] Post-adoption services--Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Examples include counseling, maintaining a registry if a central registry is not used, providing pertinent, new medical information to birth or adoptive parents, or providing the adult adoptee a copy of his record upon request.

(55) [~~(51)~~] Post-placement adoptive report--A written evaluation of the assessments and interviews, after the adoptive placement of the child, regarding the:

(A) Child;

(B) Prospective adoptive parent(s);

(C) Family of the prospective adoptive parent(s);

(D) Environment of the prospective adoptive parents [~~parent(s)~~] and their family; and

(E) Adjustment of all individuals to the placement.

(56) [~~(52)~~] Pre-adoptive home screening--See adoptive home screening.

(57) [~~(53)~~] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(58) [~~(54)~~] Professional service provider--Refers to:

(A) A child placement management staff or person qualified to assist in child placing activity;

(B) A psychiatrist licensed by the Texas Medical Board;

(C) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(D) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(E) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(F) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists;

(G) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health; and

(H) Other professional employees in fields such as drug counseling, nursing, special education, vocational counseling, pastoral counseling, and education who may be included in the professional staffing plan for your agency that provides treatment services if the professional's responsibilities are appropriate to the scope of the agency's program description. These professionals must have the minimum qualifications generally recognized in the professional's area of specialization.

(59) [~~(55)~~] Prone restraint--A restraint in which the child is placed in a chest-down hold.

(60) [~~(56)~~] Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability or an intellectual disability); and

(D) Written summary of the assessment.

(61) [~~(57)~~] Re-evaluate--Assessing all factors required for the initial evaluation for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(62) [~~(58)~~] Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(63) Residential child-care operation--A licensed or certified operation that provides residential child care. Also referred to as a "residential child-care facility."

(64) [~~(59)~~] Sanitize--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or item to air-dry.

(65) [~~(60)~~] School-age child--A child who is five years old or older and is enrolled in or has completed kindergarten [~~who will attend school in August or September of that year~~].

(66) [~~(61)~~] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(67) [~~(62)~~] Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other children [~~residents~~] and the placement of the child alone in an area from which the child [~~resident~~] is prevented from leaving. Examples of such an area include where the child is prevented from leaving by a physical barrier, force, or threat of force.

(68) [~~(63)~~] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(69) [~~(64)~~] Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(70) Single source continuum contractor--A child-placing agency that contracts with the Texas Department of Family and Protective Services to provide community-based care as described in Subchapter B-1, Chapter 264, Texas Family Code.

(71) [~~(65)~~] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors.

(72) [~~(66)~~] Substantial physical injury--Physical injury serious enough that a reasonable person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is serious may include [~~includes~~] the location or [~~and/or~~] severity of the bodily harm or [~~and/or~~] the age of the child. Substantial physical injury does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(73) [~~(67)~~] Supine restraint--Placing a child in a chest up restraint hold.

(74) [~~(68)~~] Supplement--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(75) [~~(69)~~] Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs [~~wading pools, swimming pools~~], or other bodies of water.

(76) [~~(70)~~] Toddler--A child from 18 months through 35 months old.

(77) [~~(71)~~] Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.

(78) [~~(72)~~] Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(79) [~~(73)~~] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(80) [~~(74)~~] Unsupervised childhood activities--Childhood activities that a child in care participates in away from the foster home and the foster parents. Childhood activities that the foster parents conduct or supervise or the child-placing agency sponsors are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

(81) [~~(75)~~] Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the agency without monetary compensation; [~~, including a "sponsoring family;"~~] or

(B) Any type of services under the auspices of the agency without monetary compensation when the person has unsupervised access to a child in care.

(82) [~~(76)~~] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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

Filed with the Office of the Secretary of State on December 8, 2021.

TRD-202104905
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 438-3269

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 1. PLANS AND POLICIES REQUIRED DURING [~~FOR~~] THE APPLICATION PROCESS

26 TAC §749.105

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.105. What are the requirements for my personnel policies and procedures?

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-placing agency administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and [~~and/or~~] frequency of services, if applicable; and

(C) Describes how staff or service providers support clients served through branch offices;

(4) Include written training requirements for employees and caregivers;

(5) Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(6) Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report the employee's [~~their~~] suspicion directly to the Texas Abuse and Neglect Hotline [~~us and may not delegate this responsibility~~], as directed by Texas Family Code §261.101(b). An employee may not delegate the responsibility to make a report, and you may not require an employee to seek approval to file a report or to notify you that a report was made;

(7) Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality; and

(8) Either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

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 December 8, 2021.

TRD-202104906
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 438-3269

DIVISION 7. BRANCH OFFICES

26 TAC §749.305

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.305. What are the requirements for administrators and treatment directors for a main office and branch offices?

(a) You must comply with one of the following:

(1) The main office and each branch office, must have a separate:

(A) Administrator who meets §749.631 of this title (relating to What qualifications must a child-placing agency administrator meet?); and

(B) Treatment director, if applicable, per §749.721 of this title (relating to Must I have a treatment director?); or

(2) Offices that operate based on the following caseload limits for child placement staff may share the same administrator and treatment director:

(A) A caseload of foster children only that does not exceed:

(i) 35 for children receiving child-care services;

(ii) 25 for children receiving treatment services; and

(iii) 30 for a combination of children receiving child-care services and children receiving treatment services;

(B) A caseload of foster homes only that does not exceed 15 homes; and

(C) A combination caseload of both children and homes that does not exceed 30 cases. Calculate the maximum of 30 cases by counting:

(i) Each child as one case; and

(ii) Each foster family home as one case.[; and]

[*(iii)* Each foster group home as two cases.]

(b) This rule does not apply to a child-placing agency that provides only adoption services, including foster homes verified by a private adoption agency solely for the care of infants awaiting placement in an adoptive home pending the resolution of the child's eligibility for adoption, or [and/or] the readiness of an appropriate adoptive home, or both. This exception does not apply to a foster home that is also the intended adoptive home.

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

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SUBCHAPTER D. REPORTS AND RECORD KEEPING
DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §749.503, §749.511

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.503. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:
Figure: 26 TAC §749.503(a)
[Figure: 26 TAC §749.503(a)]

(b) If there is a medically pertinent incident[, such as a seizure,] that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) If a child returns before [You must document an unauthorized absence that does not meet] the required reporting timeframe outlined [time requirements defined] in subsection (a)(8) - (10) [(a)(7) - (9)] of this section, you are not required to report the absence as a serious incident. Instead, you must document within 24 hours after you become aware of the unauthorized absence in[. You must document the absence:]

[(1)] [In] the same manner as for a serious incident, as described in §749.511 of this division.[; and]

[(2) Complete an addendum to the serious incident report to finalize the documentation requirements, if the child returns to a foster home after 24 hours.]

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, if there is a fatality [as outlined in the chart above];

(2) The legally authorized representative [parents], if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:
Figure: 26 TAC §749.503(e)
[Figure: 26 TAC §749.503(e)]

§749.511. How must I document a serious incident?

A serious incident must be documented in a written report that includes the following information:

(1) The name of the foster home or adoptive home, physical address, and telephone number;

(2) The time and date of the incident;

(3) The name, age, gender, and date of admission of the child or children involved;

(4) The names of all adults involved and their role in relation to the child(ren);

(5) The names or other means of identifying witnesses to the incident, if any;

(6) The nature of the incident;

(7) The circumstances surrounding the incident;

(8) Interventions made during and after the incident, such as medical interventions, contacts made, and other follow-up actions;

(9) The treating licensed health-care professional's name, findings, and treatment, if any; [and]

(10) The resolution of the incident; and[.]

(11) If the child returns to the operation after you complete the report for an unauthorized absence, an update regarding the unauthorized absence and the child's return.

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

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SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS
DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

26 TAC §749.635

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.635. What responsibilities must the child-placing agency administrator have?

The child-placing agency administrator must:

(1) Have daily supervision and overall administrative responsibility for all [~~of~~] your offices, including your main office and any branch offices;

(2) Ensure that the operation complies with current heightened monitoring plan(s), if applicable; and

(3) [~~(2)~~] Be responsible for or assign responsibility for:

(A) Administering and managing the agency according to your policies;

(B) Ensuring that the agency complies with applicable rules of this chapter, Chapter 42 of the Human Resources Code, Chapter 745 of this title (relating to Licensing), and other applicable laws;

(C) Personnel matters, including hiring, assigning duties, training, supervision, evaluation of employees, and terminations;

(D) Ensuring persons whose behavior or health status presents a danger to children are not allowed at the agency or foster homes; and

(E) Administering and managing your approved agency plans as stated in §749.101(3) and (4) of this title (relating to What plans must I submit for Licensing's approval as part of the application process?). These plans:

(i) Evaluate the effectiveness or your system for meeting the rules of this chapter; and

(ii) Ensure the investigation of reports of minimum standards violations, upon our request.

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

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DIVISION 3. CHILD PLACEMENT STAFF AND CHILD PLACEMENT MANAGEMENT STAFF

26 TAC §749.675

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.675. What are the qualifications an employee must have to perform child placement management activities?

In addition to the requirements that all employees must meet, employees who perform child placement management activities must meet the following qualifications:
Figure: 26 TAC §749.675
[~~Figure: 40 TAC §749.675~~]

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DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

26 TAC §749.761

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.761. What are the requirements for a volunteer?

(a) You must maintain a personnel record for each volunteer.

(b) The personnel record must include a statement signed and dated by the volunteer indicating the volunteer must immediately report any suspected incident of abuse, neglect, or exploitation to the Texas Abuse and Neglect Hotline and the agency's administrator or administrator's designee. An internal reporting policy may not require or allow a volunteer [~~person~~] to delegate the person's responsibility or require a volunteer to obtain approval to report suspected abuse, neglect, or exploitation.

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

26 TAC §749.801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.801. What do certain words and terms mean in this subchapter?

The words and terms used in this subchapter have the following meanings:

(1) CPR--Cardiopulmonary resuscitation.

(2) Hours--Clock hours.

(3) Instructor-led training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. Instructor-led training does not have to be in person, but it must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must be able to answer questions, provide feedback on skills practice, provide guidance or information on additional resources, and proactively interact with students. Examples of this type of training include classroom training, online distance learning, blended learning, video-conferencing, or other group learning experiences.

[~~(4) Normalcy--See §749.2601 of this chapter (relating to What is "normalcy"?).~~]

(4) [~~(5)~~] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(5) [~~(6)~~] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year, as described in [~~, see~~] §749.935(d) of this subchapter (relating to What types of hours or instruction can be used to complete the annual training requirements?).

[~~(7) Single source continuum contractor--A child-placing agency that contracts with the Department of Family and Protective Services to provide community-based care as described in Subchapter B-1, Chapter 264, Texas Family Code.~~]

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DIVISION 4. PRE-SERVICE EXPERIENCE AND TRAINING

26 TAC §749.868

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.868. Can a child-placing agency waive pre-service training requirements for a foster parent?

(a) A child-placing agency, including a single source continuum contractor, may waive any of the following pre-service training requirements for a foster parent if the agency determines that the requirement is not directly related to the ages and number of children the foster home will care for and the types of services the home will provide:

(1) General pre-service training;

(2) Normalcy; or

(3) Emergency behavior intervention.

(b) After waiving a pre-service training requirement for a foster parent, an agency must reevaluate the waiver if, within the first year, there is a change in the foster home's verification with respect to the ages or number of children the home can care for or the types of services the home can provide. If the agency determines that the waived pre-service training is directly related to the ages or number of children the home can care for, or the types of services the home can provide, the foster parent must complete the training.

(c) You must document:

(1) any determination that a waiver of pre-service training is appropriate for a foster parent; and

(2) any re-evaluation of the foster home due to changes to the ages or number of children the home can care for or the types of services the home can provide.

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DIVISION 7. ANNUAL TRAINING

26 TAC §749.931, §749.935

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.931. What are the annual training requirements for an employee?

(a) Each type of employee in the chart must complete the following number of annual training hours:
Figure: 26 TAC §749.931(a)
[~~Figure: 26 TAC §749.931(a)~~]

(b) For the annual training hours described in subsections (a)(1), (2), and (3) of this section, each employee must complete the following specific types of training and hours:
Figure: 26 TAC §749.931(b)
[~~Figure: 26 TAC §749.931(b)~~]

(c) The [~~About the~~] annual training hours for an employee described in subsection (a)(4) of this section:

(1) Must [~~The hours must~~] include one hour of training on prevention, recognition, and reporting on child abuse, neglect, and exploitation[~~, unless the employee is an executive director~~]; and

(2) May include [~~The employee may use~~] annual training hours that the employee completes to maintain a relevant professional license, if the hours include the necessary components of subsection (c)(1) of this section or the employee completes those components separately.

(d) There are no annual training requirements for emergency behavior intervention. However, the employee must be retrained whenever there is a substantial change in techniques, types of intervention, or agency policies for emergency behavior intervention.

§749.935. What types of hours or instruction can be used to complete the annual training requirements?

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or Continuing Education Units earned through:

(1) Workshops or courses offered by local school districts, colleges or universities, or Licensing;

(2) Conferences or seminars;

(3) Instructor-led training, as defined at §749.801(3) of this subchapter (relating to What do certain words and terms mean in this subchapter?);

(4) Self-instructional training, as defined at §749.801(5) [~~§749.801(4)~~] of this subchapter;

(5) Planned learning opportunities provided by child-care associations or Licensing;

(6) Planned learning opportunities provided by a child-placing agency administrator, professional contract service provider, professional service provider, treatment director, child placement management staff, child placement staff, contractor, or caregiver who meets minimum qualifications in the rules of this chapter; or

(7) Completed college courses for which a passing grade is earned, with three college credit hours being equivalent to 50 clock hours of required training. College courses do not substitute for required CPR or first aid [~~first-aid~~] certification or required annual training on emergency behavior intervention or psychotropic medication.

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another residential child-care operation, if the person:

(A) Received the training within the time period you are using to calculate the person's annual training; and

(B) Provides documentation of the training;

(2) Pediatric first aid [~~first-aid~~] and pediatric CPR;

(3) Any hours of pre-service training that the person earned in addition to the required pre-service hours, although you may not carry over more than 15 hours of a person's pre-service training hours for use as annual training hours during the upcoming year;

(4) Half of the hours spent developing initial training curriculum that is relevant to the population of children served, but no[~~. No~~] additional credit hours for training curriculum development are permitted for repeated training sessions; and

(5) One-fourth of the hours spent updating and making revisions to training curriculum that is relevant to the population of children served.

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Required pre-service training;

(3) The hours involved in case staffings and conferences with the supervisor; or

(4) The hours presenting training to others.

(d) No more than 80 percent of the required annual training hours may come from self-instructional training as defined at §749.801(5) [~~§749.801(4)~~] of this subchapter. No more than three of those self-instructional hours may come from self-study training as defined at §749.801(6) [~~§749.801(5)~~] of this subchapter.

(e) If a person earns more than the minimum number of annual training hours required during a particular year, the person can carry over to the next year a maximum of 15 annual training hours.

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SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT
DIVISION 1. ADMISSIONS

26 TAC §749.1113

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1113. What information must I share with the parent at the time of placement?

(a) At admission, you must provide the following policies to the parent placing the child:

(1) Fee policies;

(2) Emergency behavior intervention policies;

(3) Discipline policies;

(4) Adoption policies, if applicable; and

(5) Any other policies required by us, upon request of the parent

(b) At admission, you must provide and explain the following written information and policies to the parent placing the child:

(1) Information about the policies that you would present a child during orientation;

(2) Your policies regarding the:

(A) Use of volunteers [~~or sponsoring families~~], if applicable;

(B) Type and frequency of notifications made to parents; and

(C) Involvement of the child in any publicity or fundraising [~~and/or fund raising~~] activity for the agency; and

(3) Information about the parent's right to refuse to or withdraw consent for a child to participate in:

(A) Research programs; or [~~and/or~~]

(B) Publicity or fundraising [~~and/or fund raising~~] activities for the agency.

(c) If you sign a placement agreement for a transitional living program with a child as specified in §749.1109(c) of this title (relating to What is a placement agreement?), then you:

(1) Must share the policies noted in subsection (a) of this section with the child, instead of the parent;

(2) Do not have to comply with subsection (b) of this section, but you must provide and explain to the child your policies regarding the:

(A) Use of volunteers [or sponsoring families];

(B) Involvement of the child in any publicity or fundraising [and/or fund raising] activity for the agency; and

(C) Child's right to refuse to or withdraw consent to participate in:

(i) Research programs; or [and/or]

(ii) Publicity or fundraising [and/or fund raising] activities for the agency; and

(3) Must attempt to notify the child's parent of the child's location, if the child was admitted without the consent of the parent.

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DIVISION 2. ADMISSION ASSESSMENT

26 TAC §749.1133, §749.1135

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1133. What information must an admission assessment include?

(a) An admission assessment must provide an initial evaluation of the appropriate placement for a child[,] and ensure that you obtain the information necessary for you to facilitate service planning.

(b) Prior to a child's non-emergency admission, an admission assessment must be completed, which includes:

(1) The child's legal status;

(2) A description of the circumstances that led to the child's referral for substitute care;

(3) A description of the child's behavior, including appropriate and maladaptive behavior, and any high-risk behavior;

(4) Any history of physical, sexual, or emotional abuse or neglect;

(5) Any history of trauma;

(6) [(5)] Current medical and dental status, including the available results of any medical and dental examinations;

(7) [(6)] Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment;

(8) [(7)] The child's current developmental, educational, and behavioral level of functioning;

(9) [(8)] The child's current educational level, and any school problems;

(10) [(9)] Any applicable requirements of §749.1135 of this division [title] (relating to What are the additional admission assessment requirements when I admit a child for treatment services?);

(11) [(10)] Documentation indicating efforts made to obtain any of the information in paragraphs (1) - (10) [(1)-(9)] of this subsection, if any information is not obtainable;

(12) [(11)] The services you plan to provide to the child;

(13) [(12)] Immediate goals of placement;

(14) [(13)] The parent's expectations for placement, duration of the placement, and family involvement;

(15) [(14)] The child's understanding of the placement; and

(16) [(15)] A determination of whether and how you can meet the needs of the child.

(c) Prior to completing a child's initial service plan, the following information must be added to the admission assessment:

(1) The child's social history, including[. The history must include] information about past and existing relationships with the child's birth parents, siblings, extended family members, and other significant adults and children, and the quality of those relationships with the child;

(2) A description of the child's home environment and family functioning;

(3) The child's birth and neonatal history;

(4) The child's developmental history;

(5) The child's mental health and substance abuse history;

(6) The child's school history, including the names of previous schools attended and the dates the schools were attended, grades earned, and special achievements;

(7) The child's history of any other placements outside the child's home, including the admission and discharge dates and reasons for placement;

(8) The child's criminal history, if applicable;

(9) The child's skills and special interests;

(10) Documentation indicating efforts made to obtain any of the information in paragraphs (1) - (9) of this subsection, if any information is not obtainable;

(11) The services you plan to provide to the child, including long-range goals of placement;

(12) Recommendations for any further assessments and testing;

(13) A recommended behavior management plan; and

(14) A determination of whether and how you can meet the needs of the child, based on an evaluation of the child's special strengths and needs.

(d) You must attempt to obtain a signed authorization, so you can subsequently request in writing materials from the child's current or most recent placement, such as the admission assessment, professional assessments, and the discharge summary. You must consider information from these materials when you complete your admission assessment if they are made available to you.

§749.1135. What are the additional admission assessment requirements when I admit a child for treatment services?

When you admit a child for treatment services, you must do the following, as applicable:
Figure: 26 TAC §749.1135
[Figure: 40 TAC §749.1135]

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SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL

DIVISION 1. MEDICAL AND DENTAL CARE

26 TAC §749.1437

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new section affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1437. How must a caregiver respond when a child is injured or ill and requires immediate treatment by a health-care professional?

For an injury or illness that requires immediate treatment by a health-care professional, the caregiver must immediately have the child treated by a healthcare professional, contact emergency services, or take the child to the nearest emergency room after ensuring the supervision of any other children present. The caregiver must not be required to seek approval to contact emergency services or to take the child to the nearest emergency room.

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DIVISION 2. ADMINISTRATION OF MEDICATION

26 TAC §749.1469

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1469. What are the requirements for administering non-prescription [nonprescription] medication and supplements?

(a) For non-prescription medications and supplements, you must:

(1) Follow the label instructions for dosage; and

(2) If a health care professional has prescribed other medication, ensure that the non-prescription medication or supplement is not contraindicated with the prescribed medication by consulting with the health care professional about administering the non-prescription medication or supplement:

(A) Before administering the non-prescription medication or supplement for the first time;

(B) Before administering a different dosage of the non-prescription medication or supplement; or

(C) When there is a change to the dosage of a prescription medication or a new medication is prescribed. [Inform the child's prescribing health-care professional of the administration and dosage of any non-prescription medication or supplements to ensure the nonprescription medication and/or supplements are not contraindicated with any other medication prescribed to the child or the child's medical conditions.]

(b) You may give non-prescription [nonprescription] medication or supplements to more than one child from one container.

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

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SUBCHAPTER K. FOSTER CARE SERVICES: DAILY CARE, PROBLEM MANAGEMENT
DIVISION 1. ADDITIONAL REQUIREMENTS FOR INFANT CARE

26 TAC §749.1801

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1801. What do certain words mean in this division?

These words have the following meanings in this division:

(1) Baby bungee jumper--A bucket seat that is suspended from a doorway by an elastic bungee cord that allows an infant to bounce while sitting in the seat.

(2) Baby walker--A baby walker allows an infant to sit inside the walker equipped with rollers or wheels and move across the floor.

(3) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(4) Restrictive device--Equipment that places the body of an infant in a position that may restrict airflow or cause strangulation; usually, the infant is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and highchairs.

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

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DIVISION 4. EDUCATIONAL SERVICES

26 TAC §749.1893

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1893. What responsibilities do caregivers have for the educational needs of a child in their care?

Caregivers must:

(1) Review report cards and other information received from teachers or school authorities with the child and provide necessary information to agency staff;

(2) Counsel and assist the child regarding adequate classroom performance;

(3) Permit, encourage, and make reasonable efforts to involve the child in extracurricular activities as determined by a reasonable and prudent parent standard to the extent of the child's interests and abilities and in accordance with the child's service plan.

(4) Provide a quiet, well-lighted space for the child to study and allow regular times for homework and study;

(5) Know what emergency behavior interventions are permitted and being used with the child;

(6) Request ARD (admission, review, and dismissal), IEP (individual education plan), and ITP (individual transitional planning) meetings if concerned with the child's educational program or if the child does not appear to be making progress;

(7) Provide notice to the parent of the child of any scheduled ARD, IEP, or ITP meetings; [and]

(8) Attend ARD, IEP, ITP meetings, other school staffings, and conferences to represent the child's educational best interests, including the child being evaluated for and provided with services needed for the child to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions; and

(9) Know what is in the child's IEP and support the school's efforts to implement the IEP, if applicable.

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

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DIVISION 6. DISCIPLINE AND PUNISHMENT

26 TAC §749.1957

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.1957. What other methods of punishment are prohibited?

In addition to corporal punishment, prohibited discipline techniques include, but are not limited to:

(1) Any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment;

(2) Denial of mail or visits with their families as discipline or punishment;

(3) Threatening with the loss of placement as discipline or punishment;

(4) Using sarcastic or cruel humor [~~and verbal abuse~~];

(5) Maintaining an uncomfortable physical position, such as kneeling, or holding his arms out;

(6) Pinching, pulling hair, biting, or shaking a child;

(7) Putting anything in or on a child's mouth, such as soap or tape;

(8) Humiliating, shaming, ridiculing, rejecting, or yelling at a child;

(9) Subjecting a child to abusive or profane language;

(10) Placing a child in a dark room, bathroom, or closet;

(11) Requiring a child to remain silent or inactive for inappropriately long periods of time for the child's age;

(12) Confining a child to a highchair, box, or other similar furniture or equipment as discipline or punishment;

(13) Denying basic child rights as a form of discipline or punishment;

(14) Withholding food that meets the child's nutritional requirements; and

(15) Using or threatening to use emergency behavior intervention as discipline or punishment.

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

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SUBCHAPTER L. FOSTER CARE SERVICES: EMERGENCY BEHAVIOR INTERVENTION

DIVISION 1. DEFINITIONS

26 TAC §749.2001

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2001. What do certain terms mean in this subchapter?

These terms have the following meaning in this subchapter:

(1) Transitional hold--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal [~~or mechanical~~] restraint.

(2) Triggered review--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made within a specified period of time.

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

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DIVISION 3. ORDERS

26 TAC §749.2107

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2107. Under what conditions are PRN orders permitted for a specific child?

(a) PRN orders for certain emergency behavior interventions are permitted under the following conditions:
Figure: 26 TAC §749.2107(a)]
[~~Figure:~~ 40 ~~TAC~~ ~~§749.2107~~

(b) If you obtain a PRN order, you must provide the parent with a copy of the PRN order within 72 hours.

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DIVISION 4. RESPONSIBILITIES DURING ADMINISTRATION OF ANY TYPE OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.2153

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2153. When must a caregiver release a child from an emergency behavior intervention?

A child must be released as follows:
Figure: 26 TAC §749.2153
[~~Figure:~~ 40 ~~TAC~~ ~~§749.2153~~]

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DIVISION 7. TIME RESTRICTIONS FOR EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.2281

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2281. What is the maximum length of time that an emergency behavior intervention can be administered to a child?

The maximum length of time that certain emergency behavior interventions can be administered to a child is as follows:
Figure: 26 TAC §749.2281
[~~Figure:~~ 40 ~~TAC~~ ~~§749.2281~~]

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

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DIVISION 8. GENERAL CAREGIVER RESPONSIBILITIES, INCLUDING DOCUMENTATION, AFTER THE ADMINISTRATION OF EMERGENCY BEHAVIOR INTERVENTION

26 TAC §749.2307

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new section affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2307. What notice must I provide to the parent when I use an emergency behavior intervention with a child in care?

(a) As soon as possible, but no later than 72 hours after the initiation of the intervention, you must provide written notice to the parent that includes:

(1) The child's name;

(2) The specific emergency behavior intervention administered;

(3) The length of time the child was restrained;

(4) The child's condition following the use of the medication or release from the intervention, including:

(A) Any injury the child sustained as a result of the intervention or any adverse effects caused by the intervention; and

(B) If the child received medical assistance or treatment, the name of each person who provided the medical assistance or treatment;

(5) If a personal restraint was used, the specific restraint techniques used, including if a prone or supine restraint used as a transitional hold; and

(6) If emergency medication was used, the specific medication used, and the dosage administered to the child.

(b) A copy of the documentation provided to the parent must be maintained in the child's record.

(c) This rule does not apply to short personal restraints.

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

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DIVISION 10. OVERALL OPERATION EVALUATION

26 TAC §749.2383

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2383. What data must be collected?

(a) Quarterly, you must collect, document, and review aggregate numbers of emergency behavior interventions by type of intervention except for [~~with the exception of~~] short personal restraints.

(b) This information must be reported to us no later than 15 days after the end of each quarter [~~quarterly~~].

(c) You must maintain the data for five years.

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

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 3. VERIFICATION OF FOSTER HOME

26 TAC §749.2471

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government

Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeal affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2471. How do I convert a current foster group home verification to a foster family home verification?

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

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DIVISION 3. VERIFICATION OF FOSTER HOMES [~~HOME~~]

26 TAC §749.2485, §749.2493

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2485. What are the requirements for verifying a foster home at a residence that I own?

(a) You must verify the home in the name of one foster family for whom the home is the primary residence. You may only verify the home in the name of one foster family.

(b) A home is considered a primary residence if the person lives there on a routine basis and:

(1) It is the place of residence on their most recent tax return; or

(2) It is the address listed on their motor vehicle registration, driver's license, voter's registration, or other document filed with a public agency.

[~~(c) Foster group homes verified before January 1, 2007, are exempt from the requirements in this rule.~~]

§749.2493. May a foster home provide day care in addition to foster care?

[~~A foster group home may not provide day care in addition to foster care.~~] A foster family home may provide day care in addition to foster care under the following conditions:

(1) The number and ages of children in both types of care must meet all relevant laws and rules, including the requirements listed in §745.375 of this title (relating to May I offer child day care at my agency foster home or independent foster home?);

(2) The caregivers can supervise all children appropriately, [~~can~~] meet all children's needs, and [~~can~~] protect all children in both foster and day care;

(3) There is adequate space and there are adequate staff or caregivers to meet all applicable rules;

(4) The child-placing agency completes a written assessment, signed by child placement management staff, of the:

(A) Needs of the children in foster care and how the needs of the children in day care may impact the foster children; and

(B) Basis for determining no conflict of care exists in providing the two types of care; and

(5) Both the Residential Child-Care and Child Day-Care Divisions of Licensing approve.

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

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DIVISION 5. CAPACITY AND CHILD/CAREGIVER RATIO

26 TAC §§749.2553, 749.2563, 749.2565 - 749.2567

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeals affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2553. What is the maximum number of children that a foster group home may care for?

§749.2563. How do I determine child/caregiver ratio for a foster group home?

§749.2565. Are there restrictions on placing a child younger than five years old in a foster group home?

§749.2566. Are there restrictions on placing a child receiving treatment services for primary medical needs in a foster group home?

§749.2567. Must a foster group home maintain the child/caregiver ratio at all times?

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

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SUBCHAPTER N. FOSTER HOMES: MANAGEMENT AND EVALUATION

26 TAC §749.2827

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeal affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2827. How long may a current foster group home continue to operate?

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

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SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT

DIVISION 1. HEALTH AND SAFETY

26 TAC §§749.2903 - 749.2905

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2903. What fire safety measures are required at a foster family home not serving children receiving treatment services for primary medical needs?

(a) Foster family homes not serving children receiving treatment services for primary medical needs must have either:

(1) A fire inspection conducted by a state or local fire authority; or

(2) A fire safety evaluation conducted by your child placement staff using the State Fire Marshal's fire prevention checklist for foster home

(b) Each fire inspection or fire safety evaluation must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) The foster home must correct any deficiencies documented during any inspection or evaluation and must comply with any conditions or restrictions specified by the inspector or evaluator.

(d) If a foster family home changes verification to become either a foster family home serving children receiving treatment services for primary medical needs [~~or a foster group home~~], then the foster home must meet the fire safety measures for §749.2904 of this title (relating to What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs [~~or a foster group home~~]?) before changing the verification.

§749.2904. What fire safety measures are required at a foster family home serving children receiving treatment services for primary medical needs [~~or a foster group home~~]?

(a) Foster family homes serving children receiving treatment services for primary medical needs [~~and foster group homes~~] must have a fire inspection conducted by a state or local fire authority. You must document efforts to obtain a fire inspection. If, after exploring and documenting efforts to obtain a fire inspection for a home, you cannot obtain a fire inspection, then a fire safety evaluation may be conducted by your child-placement staff using the State Fire Marshal's fire prevention checklist for foster homes. Documentation of efforts to obtain a fire inspection must include each date, the name of the person contacted, and the person's response to the request to complete an inspection.

(b) Each inspection or use of the State Fire Marshal's checklist must be documented, including the name and telephone number of the person who conducted the inspection or evaluation.

(c) Deficiencies documented during any inspection or use of the State Fire Marshal's checklist must be corrected, and the foster

home must comply with any conditions or restrictions specified by the inspector or child-placement staff.

(d) Once you document that a fire inspection is not available in a particular area, you may use that documentation for any foster home verified by you in that area. A copy of the documentation must be on file in each foster home record to which the documentation applies.

(e) Documentation that a fire inspection is not available in a particular area is valid for one year.

§749.2905. How often must fire and health inspections be conducted at a foster home?

(a) Unless otherwise stated in the report, a fire or health inspection report obtained from a local health authority or state or local fire authority is current for two[~~:~~]

[~~(1) One year for a foster group home; and~~]

[~~(2)~~] [~~Two~~] years for a foster family home.

(b) A fire safety or health and safety evaluation conducted by your child placement staff using the State Fire Marshal's [~~by use of a~~] checklist for foster homes is current for one year.

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DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

26 TAC §749.2961, §749.2967

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.2961. Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted. However[~~, however~~], there are some specific restrictions.[~~:~~]

(1) If you allow weapons, firearms, explosive materials, or projectiles, [~~or toys that explode or shoot,~~] you must develop and enforce a policy identifying specific precautions to ensure that a child does not have unsupervised access to them, including[~~:~~]

[~~(A)~~] requiring a foster parent to keep them [~~Weapons and the ammunition must be kept~~] in locked storage when they are not in use.[~~;~~]

[~~(B) The locked storage must be made of strong, unbreakable material, except that the storage may have a glass or another breakable front or enclosure;~~]

[~~(C) Any gun placed in a locked storage that has a glass or another breakable front or enclosure must be secured with a locked cable or chain placed through the trigger guard; and~~]

[~~(D) Weapons and ammunition must be separately stored and locked unless:~~]

[~~*(i)* A person cannot obtain access to both the weapon and ammunition by using the same key or combination; or~~]

[~~*(ii)* Each firearm is stored with a trigger locking device attached to the firearm.~~]

(2) You must determine that it is appropriate for a specific child to use the weapons, firearms, explosive materials, or projectiles.[~~, or toys that explode or shoot; and~~]

(3) No child may use a weapon, firearm, explosive material, or projectile[~~, or toy that explodes or shoots~~], unless the child is directly supervised by an adult knowledgeable about the use of the weapon, firearm, explosive material, or projectile[~~, or toy that explodes or shoots~~] that is to be used by the child.

(b) Your policies must require foster parents to notify you if there is a change in the type of or an addition to weapons, firearms, explosive materials, projectiles, or toys that explode or shoot that are on the property where the foster home is located.

(c) You must determine whether it is appropriate for a specific child to use a toy that explodes or shoots. The child must be supervised when using or being around a toy that explodes or shoots, and the toy must be age appropriate to the child.

(d) [~~(c)~~] Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

§749.2967. May a caregiver transport a child in a vehicle where firearms, other weapons, explosive materials, or projectiles are present?

(a) A caregiver may transport a child in a vehicle where firearms (other than handguns), other weapons, explosive materials, or projectiles are present if:

(1) All firearms are not loaded;

(2) The firearms, other weapons, explosive materials, or projectiles are inaccessible to the child; and

(3) Possession of the firearm is legal.

(b) A caregiver may transport a child in a vehicle where a handgun is present if:

(1) The handgun is in the possession and control of the caregiver; and

(2) The caregiver is not prohibited by law from carrying a [~~licensed to carry the~~] handgun [~~under Subchapter H, Chapter 411, of the Government Code~~].

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

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DIVISION 4. SPACE AND EQUIPMENT

26 TAC §749.3025, §749.3029

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The repeals affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.3025. May an adult in care share a bedroom with a minor?
§749.3029. Can children of opposite sex share a bedroom?

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

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26 TAC §§749.3025, 749.3027, 749.3029, 749.3043

STATUTORY AUTHORITY

The new sections and amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The new sections and amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.3025. May an adult in care share a bedroom with a child in care?

(a) An adult in care may share a bedroom with a child in care if:

(1) They are siblings;

(2) The adult is the child's parent;

(3) Both of them are non-ambulatory and receive treatment services for primary medical needs; or

(4) The child is at least 16 years old, the age difference between them does not exceed 24 months, and the adult meets the requirements of:

(A) §749.1103 of this chapter (relating to After a child in my care turns 18 years old, may the person remain in my care?); or

(B) §749.1105 of this chapter (relating to May I admit a young adult into care?).

(b) The following must occur before you may allow an adult in care and a child in care to share a bedroom, unless the adult is the child's parent:

(1) The service planning team must determine that there is no known risk of harm to the child after assessing:

(A) Their behaviors;

(B) Their compatibility with each other;

(C) Their respective relationships;

(D) Any history of possible sexual trauma or sexually inappropriate behavior; and

(E) Any other identifiable factor that may affect the appropriateness of the adult and child sharing a bedroom; and

(2) The service planning team must date and document the assessment and approval in the child's service plan.

(c) The adult and the child must not sleep in the same bed unless the adult is the child's parent, and the child is between the ages of one year and 10 years old.

(d) Subsections (a) and (b) of this section do not apply to travel and camping situations.

§749.3027. May a child in care share a bedroom with an adult caregiver in the foster home?

(a) A child may share a bedroom with an adult caregiver if:

(1) It is in the best interest of the child;

(2) The child is under three years old and sleeps in the bedroom of a [~~the~~] caregiver; and

(3) The service planning team dates and documents the approval [~~Approval is documented and dated~~] in the child's service plan [~~by the service planning team~~].

(b) An exception for a child to share a bedroom with an adult caregiver may be made during specific travel and camping situations if no other more reasonable provision is available to the child and other requirements are met.

(c) Children may not sleep in the same bed with an adult caregiver at any time.

(d) To facilitate continuous supervision of a child, the caregiver may move a child to a location where the caregiver can directly

and continuously supervise a child until there is no longer an immediate danger to self or others. However, the caregiver must provide comfortable sleeping arrangements for the child.

§749.3029. May children of opposite genders share a bedroom?

(a) A child six years old or older must not share a bedroom with a child of the opposite gender, unless:

(1) They are siblings;

(2) The older child is the younger child's parent; or

(3) Both children are non-ambulatory child and receive treatment services for primary medical needs.

(b) The following must occur before you may allow children of the opposite sex to share a bedroom, unless the older child is the younger child's parent:

(1) The service planning team must determine that there is no known risk of harm to either of the children after assessing:

(A) Their behaviors;

(B) Their compatibility with each other;

(C) Their respective relationships;

(D) Any history of possible sexual trauma or sexually inappropriate behavior; and

(E) Any other identifiable factor that may affect the appropriateness of the children sharing a bedroom.

(2) The service planning team must date and document the assessment and approval in each child's service plan.

§749.3043. When is a product considered unsafe and what are a caregiver's responsibilities regarding unsafe products in a foster home?

(a) A product is considered unsafe if, after it has been recalled for any reason by the United States Consumer Product Safety Commission (CPSC):

(1) The recall has not been rescinded; and

(2) The product has not been made safe through being remanufactured or retrofitted.

(b) A caregiver is responsible for reviewing the CPSC recall list. All current and past recalls may be viewed through the CPSC's Internet website at: www.cpsc.gov. A caregiver must ensure that there are no unsafe products at the foster home unless:

(1) The product is an antique or collectible and is not used by, or accessible to, any child; or

(2) The unsafe product is being retrofitted to make it safe and the product is not used by, or accessible to, any child.

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DIVISION 7. SWIMMING POOLS, BODIES OF WATER, SAFETY

26 TAC §749.3133, §749.3137

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.3133. What are the requirements for a swimming pool at a foster home?

(a) The caregivers must inform children about house rules for use of the swimming pool and appropriate safety precautions. Adult supervision and monitoring of safety features must be adequate to protect children younger than 12 years of age and children of any age who are not competent swimmers from unsupervised access to the swimming pool.

(b) The swimming pool must be built and maintained according to the standards of the Texas Department of State Health Services and any other applicable state or local regulations.

(c) The swimming pool must have a barrier, including a fence or wall, that prevents a child's unauthorized access to the swimming pool. A swimming pool cover does not meet this requirement unless it is a power safety cover that meets the specifications of the American Society for Testing Materials, which specifies safety performance requirements for pool covers.

(d) [~~(c)~~] A fence or wall that is at least four feet high must enclose the pool area. The fence must be well constructed and be installed completely around the pool area. The back wall of a house may serve as one side of the fence or wall as long as the requirements in subsection (f) of this section are met.

(e) [~~(d)~~] Fence gates leading to the outdoor pool area must be self-closing and self-latching. Gates must be locked when the pool is not in use. Keys or locks to open the gate must not be accessible to children under the age of 12 years old, children of any age who are not competent swimmers, or any children receiving treatment services.

(f) [~~(e)~~] If the home serves as one side of the fence or wall, any door [~~Doors~~] that leads [~~lead~~] from the home to the swimming pool area must have:

(1) A door alarm; and

(2) A [~~a~~] lock that only adults or children over 12 [~~10~~] years old can reach. The lock must be completely out of the reach of children younger than 12 [~~10~~] years old, unless:[~~.~~]

(A) the state or local fire authority determines that the height of the lock violates or would violate the fire code; and

(B) the fire authority's determination is kept in the foster home record.

(g) [~~(f)~~] Furniture, equipment, or large materials must not be close enough to the swimming pool area for a child to use them to gain

unauthorized access to the swimming pool [~~scale the fence or release a lock~~].

(h) [~~(g)~~] At least two life-saving devices must be available, such as a reach pole, backboard, buoy, or a safety throw bag with a brightly colored buoyant rope or throw line. One additional life-saving device must be available for each 2,000 square feet of water surface, so a swimming pool of 2,000 square feet would require three life saving devices.

(i) [~~(h)~~] Drain grates must be in place, in good repair, and capable of being removed only with tools.

(j) [~~(i)~~] Caregivers must be able to clearly see all parts of the swimming pool [~~area~~] when supervising activity in the area.

(k) [~~(j)~~] The bottom of the swimming pool must be visible at all times.

(l) [~~(k) Pool~~] Swimming pool covers must be completely removed prior to pool use.

(m) [~~(l)~~] An adult must be present who is able to immediately turn off the pump and filtering system when any child is in the swimming pool.

(n) [~~(m) Pool~~] Swimming pool chemicals and pumps must be inaccessible to all children.

(o) [~~(n)~~] Machinery rooms must be locked to keep children out.

(p) [~~(o)~~] An aboveground swimming pool must:

(1) Be inaccessible to children under the age of 12 years old, children of any age who are not competent swimmers, or any children receiving treatment services when it is not in use; and

(2) Meet all other requirements in this division [~~rule except for subsections (c) - (e) of this section~~].

[~~(p) A pool cover does not substitute for any of the requirements in this rule.~~]

§749.3137. What are the child/adult ratios for swimming activities?

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:
Figure: 26 TAC §749.3137(a)]
[~~Figure: 40 TAC §749.3137(a)~~]

(b) When all of the children in the group are at least four years of age or older, in addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, at least two adults must supervise four or more children who are actually in the water.

(c) When a child who is non-ambulatory or who is subject to seizures is engaged in swimming activities, you must assign one adult to that one child. This adult must be in addition to any lifeguard on duty in the swimming area. You do not have to meet this requirement if a licensed physician writes orders in which the physician determines that the child:

(1) Is at low risk of seizures and that special precautions are not needed; or

(2) Only needs to wear a Coast Guard [~~an~~] approved life jacket while swimming and additional special precautions are not needed.

(d) A lifeguard who is supervising the area where the children are swimming may be counted in the child/adult ratio; however, one caregiver must always be present and the lifeguard may not be the only person counted in the child/adult ratio.

(e) A child must wear a Coast Guard approved life jacket while participating in swimming activities in other bodies of water, such as ponds, rivers, lakes, and oceans, if the child is:

(1) Under the age of 12; or

(2) Unable to swim, regardless of the child's age.

(f) [~~(e)~~] The ratios in subsection (a) of this section:

(1) do not include children over the age of 12 years old who are competent swimmers.

(2) are not required when children are participating in water activities such as sprinkler play or splash pad/wading pool, as long as the standing water is less than two feet. [~~However, you must still comply with the child/caregiver ratios required in §749.2563 of this title (relating to How do I determine child/caregiver ratio for a foster group home?).~~]

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SUBCHAPTER Q. ADOPTION SERVICES: CHILDREN

DIVISION 5. REQUIRED INFORMATION

26 TAC §749.3391, §749.3395

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendments affect Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.3391. What information must I compile for a child I am considering for adoptive placement?

(a) As part of the Health, Social, Educational, and Genetic History report, you must compile the following information for a child you are considering for adoption placement:
Figure: 26 TAC §749.3391(a)
[~~Figure: 26 TAC §749.3391(a)~~]

(b) In addition, you must document the following in the child's record:

Figure: 26 TAC §749.3391(b)

[Figure: 26 TAC §749.3391(b)]

(c) This section does not apply to an adoption by the child's:

(1) Grandparent;

(2) Aunt or uncle by birth, marriage, or prior adoption; or

(3) Stepparent.

§749.3395. What information must I provide the adoptive parents prior to or at the time of adoptive placement?

(a) The agency must discuss information about the child and his birth parents with the prospective adoptive parents.

(b) According to the Texas Family Code §162.0062, you must inform the prospective adoptive parents of their right to examine the records and other information relating to the history of the child, including the Health, Social, Educational, and Genetic History (HSEGH) report and the child's health history within the HSEGH, if you are required to do a HSEGH for the adoption.

(c) Any records or other information examined by the prospective adoptive parents or any written information provided to the prospective adoptive parents must be edited to protect any confidential information.

(d) You must also provide the prospective adoptive parents with:

(1) Research, which may be suggested reading materials and/or websites, on how any known health issue that the child has and/or any trauma the child has experienced (i.e. abuse or neglect) may impact child development and the family's ability to maintain permanency;

(2) Information about the Department of Family and Protective Services (DFPS) adoption assistance programs, if the family may be eligible for such assistance;

(3) Information about community services and other resources available to support a parent who adopts a child; and

(4) The options available to the adoptive parent if the parent is unable to care for the adopted child, including working with the parent's post adopt provider about the possibility of post adoption substitute care services or working with the child placing agency that placed the child for adoption regarding any additional services. You should also inform the adoptive parents that the Texas Family Code, §162.026 makes it illegal to informally transfer the custody of an adopted child to a person, unless the person is a relative or stepparent of the child or an adult who has a significant long-standing relationship with the child, or the transfer of custody is a formal transfer of custody of the child through a court.

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

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SUBCHAPTER R. ADOPTION SERVICES: BIRTH PARENTS

DIVISION 1. BIRTH PARENT PREPARATION

26 TAC §749.3503

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.3503. What are the requirements for contacting birth parents that become my clients?

(a) Child placement staff must have at least:

(1) Two face-to-face contacts with birth parents prior to the relinquishment of parental rights over a period of two or more days. At least one interview must be held after the birth of the child. If face-to-face contact with the birth father is not feasible, you must document justification for contacts that are not face-to-face; and

(2) Except in cases of relinquishment or involuntary termination of parental rights, quarterly contact with birth parents prior to placement of the child.

(b) If the contacts required in subsection (a) of this section cannot be made, you must document that you have exercised reasonable efforts to locate the absent parent, and you must document why the contacts could not be made. Reasonable efforts to locate an absent parent are not required for an alleged biological father whose rights will be terminated under Texas Family Code §161.002(c-1).

(c) Contacts must assist birth parents to:

(1) Understand their feelings regarding relinquishing the child for adoption;

(2) Understand the long-range [~~long range~~] implications of relinquishing the child for adoption;

(3) Freely make a choice regarding relinquishing the child to the agency for adoption. The birth parents must not be pressured to make a decision to place their child for adoption;

(4) Express their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with adoptive family; and

(5) Provide the required Health, Social, Educational, and Genetic History Report (HSEGH) information, if applicable.

(d) The following topics must be discussed with the birth parents:

(1) Preparation for childbirth, when applicable;

(2) Relinquishment or waiver of parental rights;

(3) Termination of parental rights; and

(4) Counseling in regard to separation, loss, and grief issues.

(e) Staff providing the service must document all contacts with birth parents.

(f) You may contract with another licensed child-placing agency to make these contacts as long as:

(1) The person making the contacts meets the minimum qualifications for a child-placement staff in §749.673 of this title (relating to What are the qualifications that an employee must have to perform child placement activities?);

(2) The agency submits the required documentation to you;

(3) Your child-placement management staff reviews and approves the documentation; and

(4) You maintain the documentation in the child's record.

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SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

DIVISION 4. TRAINING

26 TAC §749.4155

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.4155. What are the annual training requirements for caregivers and employees?

Caregivers and certain employees must complete the following training hours:

Figure: 26 TAC §749.4155]

[~~Figure: 40 TAC §749.4155~~

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DIVISION 5. ADMISSION AND SERVICE PLANNING

26 TAC §749.4267

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, while subsection (b) requires HHSC to conduct a comprehensive review of these rules every six years.

The amendment affects Texas Government Code §531.0055, HRC §42.042, and Texas Family Code §264.1214.

§749.4267. May an [~~a young~~] adult in care share a bedroom with a child in care receiving trafficking victim services?

(a) In addition to the requirements listed in §749.3025 of this chapter [~~title~~] (relating to May an adult in care share a bedroom with a child in care [~~minor~~]?), you must re-assess the behaviors, maturity level, and relationships of each resident to determine whether there are risks to either the child in care [~~minor~~] or adult in care anytime a resident [~~child or young adult~~]:

(1) Runs away from the foster home and returns to care; or

(2) Is discharged from your program and returns to care.

(b) The re-assessment must be documented and dated in the child's 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.

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

28 TAC §§102.4, 102.5, 102.8

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§102.4, 102.5, and 102.8, concerning claim electronic data interchange (EDI) reporting. The purpose of these amendments is to update the outdated workers' compensation claim EDI reporting standard from the currently required International Association of Industrial Accident Boards and Commissions (IAIABC) Release 1.0 to IAIABC Release 3.1.4. The claim EDI reporting standard is proposed in Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division. DWC posted an informal draft of the rule text on its website on November 17, 2020, and held a stakeholder meeting on December 16, 2020. DWC received eight comments on the informal draft and considered those comments when drafting this proposal. DWC posted a second informal draft of the rule text on its website on May 25, 2021. DWC received no comments on the second informal posting.

EXPLANATION. Amending §§102.4, 102.5, and 102.8 are necessary to relocate and update current claim EDI reporting requirements to proposed Chapter 124, new Subchapter B, and to implement the new claim EDI IAIABC Release 3.1.4 reporting standard. The amendments are also necessary to clarify and update existing reporting and notification requirements. The proposal includes various effective dates for the sections and subsections. The purpose of the various effective dates is to align claim EDI reporting requirements in this chapter with the effective date of other requirements in proposed Chapter 124, new Subchapter B. The amendments also correct typographic, grammar, and punctuation errors in the current rule text and update rule language to conform the sections to the agency's current style. Some examples of these amendments include changing "shall" to "must" and "facsimile" to "fax," adding "insurance" before "carrier," and updating "Commission" to "division."

Section 102.4 concerns General Rules for Non-Division Communications. The proposal amends §102.4(d) to add email addresses as a type of required business service insurance carriers and health care providers must provide in a sufficient quantity to receive required written communication on workers' compensation claims. This change is meant to recognize email as another mode of communication between injured employees and insurance carriers and health care providers. The proposal also amends "regarding" to "on" to conform language to the agency's current style.

The proposal amends §102.4(g) to remove "numbers person" and clarifies the language by specifying that insurance carriers must employ or provide a sufficient number of personnel, including adjusters appropriately licensed by the Texas Department of Insurance, to meet their obligations under the Texas Labor Code and this title.

The proposal amends §102.4(m) to remove the reference to "electronic communication." The term is no longer needed since the term "electronic transmission" adequately describes the type of communication.

The proposal amends §102.4(n) by removing "number of" and adding "numbers" to clarify that insurance carriers and health care providers must provide sufficient toll-free telephone numbers, fax numbers, or email addresses. The proposed language also amends §102.4(n) to conform with the changes made in Subsection (d), which adds email addresses as a type of required business service insurance carriers and health care providers must provide in a sufficient quantity to receive required written communication on workers' compensation claims.

The proposal amends §102.4(o) by removing "number of" and adding "numbers" to clarify that insurance carriers and health care providers must provide sufficient toll-free telephone numbers, fax numbers, or email addresses. The proposed language also amends §102.4(o) to add email addresses as a type of required business service that insurance carriers and health care providers must provide in a sufficient quantity to receive required written communication on workers' compensation claims.

The proposal adds new subsection (q), which clarifies that the section is effective on adoption since other portions of this proposal are effective on that same date as the proposed Chapter 124, new Subchapter B requirements for claim EDI reporting.

Section 102.5 concerns General Rules for Written Communications to and from the Division.

The proposal amends §102.5(a) by removing the ability for the injured employee to request delivery of communications from DWC to be delivered only to the injured employee's representative. DWC's claims management systems limit the ability for it to fulfill this kind of request.

The proposal amends §102.5(c) by updating language on where to send written communications to DWC. DWC no longer manages claims in specific field offices because technological enhancements allow DWC staff to receive and send documents to the appropriate program areas.

The proposal amends §102.5(d) by clarifying and updating that DWC maintains the insurance carrier's Austin representative's box in an electronic format. The amendments also clarify that documents DWC transmits electronically are considered electronic transmission as defined by §102.5(h).

The proposal amends §102.5(e) to clarify that EDI and other required notices under §124.2, concerning Insurance Carrier Notification Requirements, and Chapter 134, Subchapter I, concerning Medical Bill Reporting, are the types of notices required to be filed under the subsection. The proposal also amends §102.5(e) by deleting references to EDI reporting requirements related to timeframes, edit checks, rejected records, and resubmission of records with errors. The claim EDI reporting requirements are relocated and updated in proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division.

The proposal amends §102.5(e) by deleting outdated and unnecessary references to claim and medical EDI reporting.

The proposal amends §102.5(h) by abbreviating "electronic data interchange" as "EDI" because the term is defined earlier in the subsection. This amendment is nonsubstantive and conforms to the agency's current style. DWC reminds insurance carriers of 28 TAC §102.3(e) that states, unless otherwise specified by rule, any written or telephonic communications required to be filed by a specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing.

The proposal adds new subsection (i), which clarifies that subsection (e) is effective July 26, 2023, to align with the effective date of the claim EDI requirements in proposed Chapter 124, new Subchapter B. The other subsections are effective on adoption.

Section 102.8 concerns Information Requested on Written Communications to the Division. The proposal amends §102.8(a) by deleting "FEIN" because the abbreviation is not used elsewhere in the section.

The proposal amends §102.8(b) to update references to proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and deletes references to mandatory and conditional data elements for claim EDI reporting. The claim EDI reporting requirements are relocated and updated in proposed Chapter 124, new Subchapter B. The proposal also amends §102.8(b) to specify that the subsection refers to claim EDI and updates the reference to the amended title of §124.2, concerning Insurance Carrier Notification Requirements.

The proposal adds new subsection (c), which clarifies that subsection (a) is effective on adoption. Amended subsection (b) is effective July 26, 2023, to align with the effective date of the claim EDI requirements in proposed Chapter 124, new Subchapter B.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Business Process Joseph McElrath 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 enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing the proposed amendments. Local and state government entities, when acting in the capacity of an insurance carrier, will experience a cost impact in the same manner as other insurance carriers that are required to comply with the proposed amended §124.2, concerning Insurance Carrier Notification Requirements, and proposed amended §§102.4, 102.5, and 102.8 concerning Insurance Carrier Claim EDI Reporting to the Division. Costs that apply to local and state government entities are detailed in the proposal for that chapter. Deputy Commissioner McElrath does not anticipate any measurable effect on local employment or the local economy as a result of this proposal. The amendments to Chapter 102 reflect other changes made to proposed amended §124.2, concerning Insurance Carrier Notification Requirements, and proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and do not impose more requirements that could produce a fiscal impact.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner McElrath expects that administering the proposed amendments will have the public benefit of ensuring that the rules conform to Labor Code §§401.024 and 411.032, and that the requirements of the subsections align with the claim EDI reporting requirements in proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Notification Requirements. New Subchapter B will adopt updated national data reporting standards that meet DWC's business needs.

Deputy Commissioner McElrath expects that the proposed amendments will not increase the cost to comply with Labor Code §§401.024 and 411.032 because it does not impose requirements beyond those in the statute. Labor Code §401.024 allows the commissioner of workers' compensation to require the use of an electronic transmission of claim data. Labor Code §411.032 requires an employer to file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. As a result, the cost associated with electronic transmission of claim data or with an employer reporting an employee's on-the-job injury or occupational disease does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or rural communities because it simply implements statutory requirements. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because proposed §§102.4, 102.5, and 102.8 are necessary to implement legislation. The proposed rule implements Labor Code §§401.024 and 411.032, as added by HB 2511, 76th Legislature, Regular Session (1999) and HB 7, 79th Legislature, Regular Session (2005), respectively. Those required to comply with proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Notification Requirements will incur costs to comply. Those costs are addressed in the proposal for that chapter.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC 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;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit, or repeal an existing regulation;

- increase or decrease the number of individuals subject to the rule's applicability; or

- positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and 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. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on January 24, 2022. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711.

The commissioner of workers' compensation will also consider written and oral comments on the proposal in a virtual public hearing at 10:00 a.m., Central time, on January 18, 2022.

STATUTORY AUTHORITY. DWC proposes amended §§102.4, 102.5, and 102.8 under Labor Code §§401.024, 402.00111, 402.00116, 402.021, 402.061, and 411.032.

Labor Code §401.024 allows the commissioner of workers' compensation to require the use of an electronic transmission; prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability; and designate and contract with one or more data collection agents to fulfill claim data collection requirements. The section also provides that a data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier. The section also provides that the commissioner of workers' compensation may adopt rules necessary to implement the section.

Labor Code §402.00111 provides that the commissioner of workers' compensation must exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation must administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.021 provides the basic goals of the workers' compensation system and specifically directs that the system take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

Labor Code §402.061 provides that the commissioner of workers' compensation must adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §411.032 provides that an employer must file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. The section also requires the commissioner of workers' compensation to adopt rules and prescribe the form and manner of reports filed under the section. The section also provides that an employer commits an administrative violation if it fails to report to DWC as required unless the commissioner determines good cause exists for the failure.

CROSS-REFERENCE TO STATUTE. Sections 102.4, 102.5, and 102.8 implement Labor Code §§401.024 and 411.032.

§102.4. General Rules for Non-Division [~~Non-Commission~~] Communications.

(a) All written communications to a claimant (who is either an employee, an employee's legal beneficiary, or a subclaimant) must [~~shall~~] be sent to the most recent address or fax [~~facsimile~~] number supplied by the claimant. If an address has not been supplied by the claimant, the most recent address provided by the employer must [~~shall~~] be used.

(b) After an insurance carrier, employer, or health care provider is notified in writing that a claimant is represented by an attorney or other representative, copies of all written communications related to the claim or to the claimant must [~~shall thereafter~~] be mailed or delivered to the representative as well as the claimant, unless the claimant requests delivery to the representative only.

(c) Insurance carriers must [~~shall~~] provide a toll-free [~~toll free~~] telephone number for receipt of communication from claimants or [~~and/or~~] their representatives with a sufficient quantity of lines to service their volume of business.

(d) Insurance carriers and health care providers must [~~shall~~] provide telephone numbers, fax [~~and facsimile~~] numbers, and email addresses [~~in~~] sufficient [~~quantity of lines~~] to service the volume of business for receiving required verbal and written communications on [~~regarding~~] workers' compensation claims.

(e) Insurance carriers must ensure effective and timely communication with claimants and other parties in the system. If a claimant is unable to communicate with an insurance [a] carrier due to a language barrier, and the claimant is unable to provide a person that [~~who~~] he or she trusts to serve as a translator, the insurance carrier must [~~shall~~] provide a means to translate except as needed for a division [~~Commission~~] proceeding. The claimant must [~~shall~~] not be required to contract with or otherwise employ a translator.

(f) When a claimant contacts an insurance [a] carrier and requests a response on [~~regarding~~] their claim, the response must [~~shall~~] be verbally provided or sent in writing by the insurance carrier within five working days of receiving the request, unless the request is redundant or the response duplicates [~~is duplicative of~~] information previously provided.

(g) Insurance carriers must [~~shall~~] employ or provide a sufficient number of personnel, [~~numbers of person,~~] including adjusters appropriately licensed by the Texas Department of Insurance, to meet their obligations under the Act and this title.

(h) Unless the great weight of evidence indicates otherwise, written communications will [~~shall~~] be deemed to have been sent on:

(1) the date received[~~,~~] if sent by fax, personal delivery, or electronic transmission; or[~~,~~]

(2) the date postmarked if sent by mail through [~~via~~] United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent must [~~shall~~] be the next previous day that [~~which~~] is not a Sunday or legal holiday.

(i) An insurance [~~A~~] carrier must [~~shall~~] maintain adjuster's notes on activities and verbal communications involved with the administration of a claim, with the exception of privileged attorney-client communications. The adjuster's notes must, [~~shall,~~] at a minimum, include the date of the activity or communication, the identity of the insurance carrier staff involved in the contact, the person contacted by

or contacting the insurance carrier, and a summary of the activity or communication.

(j) An insurance carrier, employer, or health care provider that receives a written communication related to a workers' compensation claim must [shall] date stamp or otherwise note on [annotate] the document [indicating] the date the written communication was received.

(k) Written communications include all records, reports, notices, filings, submissions, and other information contained either on paper or in an electronic format.

(l) For purposes of this title, if a written communication is required to be filed with both the division [Commission] and another person by the Act or division [Commission] rules, the other person will [shall] be presumed to have received the written communication on the date the division [Commission] received its copy, unless the other person noted [annotated] the date of receipt as provided in subsection (j) of this section, or the means of delivery of the communication was different. In this situation, the other person has the burden of proving that they [it] did not receive or timely receive the written communication.

(m) [Electronic communication refers to the electronic transmission of claim or medical information.] Electronic transmission is defined as transmission of information by fax, [facsimile,] electronic mail, electronic data interchange (EDI), or any other similar method and does not include telephonic communication. [Electronic communication for reporting purposes is described in §102.5(e) of this chapter (relating to General Rules for Written Communications to and from the Commission), §124.2 of this title (relating to Carrier Reporting and Notification Requirements), and §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Commission.]

(n) If the division [Commission] receives an allegation that an insurance [a] carrier or health care provider has failed to provide [a] sufficient [number of] toll-free telephone numbers, [toll] telephone numbers, fax numbers, or email addresses, [or facsimile lines,] or that an insurance [a] carrier has not provided a sufficient number of adjusters as required by this section, unless the violation appears to be willful or intentional, the division [Commission] will not issue a monetary penalty or other sanctions before [prior to]:

(1) notifying the alleged violator of the allegation;

(2) affording the alleged violator the opportunity to either disprove the allegation or provide mitigating information; and

(3) if the violator is unable to disprove the allegation, issuing a written warning to the violator allowing a reasonable grace period of not less than 30 days to correct the noncompliance. The grace period may be less than 30 days if the noncompliance prevents the violator from fulfilling other obligations under this title.

(o) A violation as described in subsection (n) will be considered willful or intentional if the violator has been advised of complaints such that the violator knew or should have known that the [number of] toll-free telephone numbers, [toll] telephone numbers, fax numbers, email addresses, [facsimile lines] or number of adjusters was insufficient, and the violator cannot establish that it made good faith efforts to correct the deficiency or if the violator otherwise exhibited willful or intentional conduct.

(p) For purposes of determining the date of receipt for non-division [non-commission] written communications, unless the great weight of evidence indicates otherwise, the division will [Commission shall] deem the received date to be five days after the date mailed through [via] United States Postal Service regular mail,[;] or the date faxed or electronically transmitted.

(q) This section is effective on adoption.

§102.5. General Rules for Written Communications to and from the Division [Commission].

(a) After the division [Commission] is notified in writing that a claimant is represented by an attorney or other representative, all copies of written communications to the claimant will [shall thereafter] be sent to the representative as well as the claimant.[, unless the claimant requests delivery to the representative only. However, copies] Copies of settlements, notices setting benefit review conferences and hearings, and orders of the division will [Commission shall] always be sent to the claimant regardless of representation status. All written communications to the claimant or claimant's representative will be sent to the most recent address or fax [facsimile] number supplied on either the employer's first report of injury, any verbal or written communication from the claimant, or any claim form filed by the insurance carrier through [via] written notice or electronic transmission.

(b) All written communications to people [persons] other than insurance carriers and claimants will be sent to the most recent address or fax number reported to the division [Commission] by the intended recipient or, in the absence of an address or fax number supplied by the intended recipient, to an address or fax number identified by the division. [Commission.]

(c) Unless otherwise specified by rule, written communications required to be filed with the division may [Commission should] be sent to the division headquarters or any division field office. [the local a Commission managing the claim, however, written communications shall also be accepted at any Commission office.]

(d) For purposes of determining the date of receipt for [those] written communications sent by the division, [Commission] which require the recipient to perform an action by a specific date after receipt[,] unless the great weight of evidence indicates otherwise, the division will [Commission shall] deem the received date to be the earliest of: five days after the date mailed through [via] United States Postal Service regular mail,[;] the first working day after the date the written communication was placed in an insurance [a] carrier's Austin representative's electronic [representative] box,[;] or the date faxed or electronically transmitted as defined in subsection (h) of this section.

(e) EDI and other required notices must [Electronic communications shall] be filed or submitted in the format, form, and manner prescribed by the division under §124.2 of this title (concerning Insurance Carrier Notification Requirements), and Chapter 134, Subchapter I of this title (concerning Medical Bill Reporting). [Commission. Electronic communication is considered filed if on the date received, the record meets the required edit checks to insure data quality. Electronic communication is defined in subsection (h) of this section, §102.4(m) of this chapter (relating to General Rules for Non-Commission Communications), and §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Commission. Claim Electronic Data Interchange records filed pursuant to §124.2 of this title (relating to Carrier Reporting and Notification Requirements):]

[(1) which do not pass the required edit checks in accordance with the International Association of Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation Guides shall be rejected back to the trading partner. Rejected records are not considered received by the Commission and must be corrected and re-submitted. Rejected records must be re-submitted by the original due date to be considered timely filed;]

[(2) which are accepted but in which the Commission identifies errors shall be corrected and resubmitted, in accordance with the Texas EDI Implementation Guide, within 90 days of receipt of the notification of the acceptance with errors through the corresponding transaction acknowledgment.]

(f) Unless the great weight of evidence indicates otherwise, written communications received by the division will [Commission by means other than electronic filing described in subsection (e) of this section and §124.2 of this title, and §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Commission shall] be deemed to have been sent on:

(1) the date received if sent by fax, personal delivery, or electronic transmission; or[,]

(2) the date postmarked if sent by United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent will [shall] be the next previous day that [which] is not a Sunday or legal holiday.

(g) Written communications include all records, reports, notices, filings, submissions, and other information contained either on paper or in an electronic format.

(h) Electronic transmission is defined as transmission of information by fax, [facsimile,] electronic mail, EDI, [electronic data interchange] or any other similar method and does not include telephonic communication.

(i) Subsection (e) is effective July 26, 2023. All other subsections are effective on adoption.

§102.8. Information Requested on Written Communications to the Division.

(a) Unless the division-prescribed [division prescribed] form, format, or manner of a written communication specifies otherwise, all written communications to the division about [regarding] an injured employee or claim for benefits must [shall] include the following information, if known:

(1) the injured employee's full name, date of injury, address, and Social Security [social security] number. If no Social Security [social security] number has been assigned, insert the numerical digits "999" followed by the claimant's birth date or if unknown, the claimant's date of injury[,] listed by the month, day, and year (MMDDYY). Do not use[; use of] "999" [shall not be used] in place of a valid Social Security [social security] number [in order] to meet timeliness of reporting requirements.

(2) the name and address of the claimant, if other than the injured employee;

(3) the workers' compensation number assigned to the claim by the division;

(4) the employer's name and address;

(5) the employer's Federal Employer's Identification Number; [(FEIN);]

(6) the insurance carrier's name;

(7) the insurance carrier's policy number; and

(8) the insurance carrier's claim number.

(b) Written communications filed by claim EDI under [Electronic Data Interchange (EDI) pursuant to] §124.2 of this title (concerning [relating to] Insurance Carrier [Reporting and] Notification Requirements) must comply with the requirements of Chapter 124, Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data Interchange Reporting to the Division). [include all mandatory data elements and all applicable conditional data elements required by the International Association of Industrial Accident Boards and Commissions (IAIABC) and Texas EDI Implementation Guides.]

(c) Subsection (a) is effective on adoption. Subsection (b) is effective July 26, 2023.

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 December 13, 2021.

TRD-202105052
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 804-4703

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CHAPTER 124. INSURANCE CARRIERS: [REQUIRED] NOTICES, PAYMENTS, AND REPORTING [AND MODE OF PAYMENT]

The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §124.2, concerning insurance carrier reporting and notification requirements and new Subchapter B, 28 TAC §§124.100 - 124.108, concerning insurance carrier claim electronic data interchange (EDI) reporting to DWC. The purpose of these amendments is to update the outdated workers' compensation claim EDI reporting standard from the currently required International Association of Industrial Accident Boards and Commissions (IAIABC) Release 1.0 to IAIABC Release 3.1.4.

The proposal also creates new Subchapter A, concerning Insurance Carriers: Required Notices and Modes of Payment for 28 TAC §§124.1 - 124.7. The claim EDI reporting standard is proposed in Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division. The amendments also update the name of the chapter to conform with the agency's current style and create a new Subchapter A, titled Insurance Carriers: Required Notices and Modes of Payment. The rule does not make any changes that affect when notices, such as plain language notices, are due to the injured employee or DWC in §124.2. DWC also does not anticipate making any changes to the language of plain language notices required in §124.2 as a result of this proposal.

DWC posted an informal draft of the rule text on its website on November 17, 2020, and held a stakeholder meeting on December 19, 2020. DWC received eight comments on the informal draft and considered those comments when drafting this proposal. DWC posted a second informal draft of the rule text on its website on May 25, 2021. DWC received five comments on the second informal draft and considered those comments when drafting this proposal. DWC also requested more feedback from insurance carriers, trading partners, and claim administrators on the cost and time frame needed to comply with the new data collection standard. DWC received 17 comments on the cost and timeframe. DWC considered those comments when drafting this proposal.

EXPLANATION. Amending §124.2 is necessary to relocate and update current claim EDI reporting requirements to proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and to implement the

new claim EDI IAIABC Release 3.1.4 reporting standard. The amendments are also necessary to clarify and update existing reporting and notification requirements. The amendments also correct typographic, grammar, and punctuation errors in the current rule text and update rule language to conform the sections to the agency's current style. Some examples of these amendments include changing "shall" to "must" and "facsimile" to "fax," adding "insurance" before "carrier," and updating "Commission" to "division."

New §§124.100 - 124.108 are necessary to update current claim EDI reporting requirements to the claim EDI IAIABC Release 3.1.4 reporting standard. The amendments also clarify and update existing reporting and notification requirements. In 1995, the 74th Texas Legislature amended the Texas Workers' Compensation Act requiring insurance carriers to submit employers' first reports of injury (FROI) electronically to the Texas Workers' Compensation Commission (TWCC). TWCC adopted rules for EDI processing later that year. TWCC adopted the IAIABC national standards for claim EDI Release 1.0 for claim EDI data. TWCC made changes to claim EDI reporting in 2004 to enable the data to pass to TXCOMP, DWC's web-based claims system. DWC has not made changes to the claim EDI reporting standard since then. Using the updated national data reporting standard for claim EDI will improve the quality of data reported, allowing DWC to better perform its administrative and regulatory duties. Insurance carriers that operate in other states that already report claim EDI data using the IAIABC Release 3.1.4 reporting standard will also benefit by not having to maintain an outdated reporting standard for Texas claims.

The proposal amends the title of Chapter 124, Carriers: Required Notices and Mode of Payment, to Insurance Carriers: Notices, Payments, and Reporting. This more accurately describes the content of the chapter, since §§124.1 - 124.7 are proposed to be grouped under a new subchapter titled Subchapter A. Insurance Carriers: Required Notices and Modes of Payment. Proposed Chapter 124, new Subchapter B, titled Subchapter B. Insurance Carrier Claim EDI Reporting to the Division contains claim reporting requirements moved from proposed Subchapter A, §124.2. The amendment to the title of Chapter 124 also updates the rule language to conform the sections to the agency's current style by adding "insurance" before "carrier."

Section 124.2 concerns Insurance Carrier Reporting and Notification Requirements. The proposal amends the title of §102.4 to remove "Reporting" from the title. Proposed Chapter 124, new Subchapter B, titled Subchapter B. Insurance Carrier Claim EDI Reporting to the Division contains claim reporting requirements for insurance carriers.

The proposal removes §124.2(b) because requirements related to the form, format, and matter of claim EDI transmissions are included in proposed Chapter 124, new Subchapter B.

The proposal amends §124.2(c) by adding a reference to proposed Chapter 124, new Subchapter B.

The proposal amends §124.2(c)(1)(A) to clarify that insurance carriers must file electronically with DWC information about a fatality as described in §124.2(c)(1).

The proposal amends §124.2(c) by adding a new §124.2(c)(2) that requires insurance carriers to report information about an acquired claim electronically to DWC no later than the 37th day after the acquiring claim administrator has knowledge of claim-specific information from the previous claim administrator. This timeframe is designed to allow the acquiring claim administrator 30 days to get the minimal information required to report the claim electronically to DWC. The timeframe also includes an additional seven days for the insurance carrier, aligning with the filing timeframe requirement for other claims as detailed in §124.2(c)(1). The proposal amends current §124.2(c)(2) by removing "(Correction)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report corrections electronically. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(c)(3) by removing "(Compensable Death No Beneficiaries/Payees)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report electronically the compensable death of an injured employee without beneficiaries or payees. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(c)(4) by removing "(Change)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report corrections electronically. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(d) by removing "(Denial)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report a claim denial electronically. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(1) by removing "(Initial Payment)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report electronically the first payment of indemnity benefits on a claim. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(2) by clarifying that reporting a change in the net benefit payment amount without a change to the benefit type is the same as reporting caused by a change in the employee's post-injury earnings. This amendment aligns rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

The proposal amends §124.2(e) by adding new §124.2(e)(2) that requires insurance carriers to report the first payment of indemnity benefits on an acquired claim within 10 days of making the first payment. This timeframe aligns with the timeframe for reporting the first payment of an indemnity benefit on a claim as detailed in §124.2(e)(1). Insurance carriers will also be required to use a new plain language notice that specifically notifies an injured employee or beneficiary about the first payment of income benefits on an acquired claim.

The proposal amends §124.2(e)(3) by removing a reference to the change in the net benefit payment amount that was not caused by a change in the employee's post-injury earnings. Proposed amended §124.2(e)(2) now includes reporting all changes in the net benefit payment amounts including, but not limited to, changes resulting from subrogation, attorney fees, advances, and contribution. The proposed change aligns rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

The proposal amends §124.2(e)(4) - (6) by removing "(Change in Benefit Type)," "(Reinstatement of Benefits)," and "(Suspension)," from the text. The terms refer to the maintenance type code description in the claim EDI reporting standard used to report electronic changes in benefit types, reinstatement of benefits, and suspensions of indemnity benefits. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(7) by adding a reference to §129.1(1) that specifies the meaning of employer continuation of salary. The proposal also amends §124.2(e)(7) by removing "(Full Salary)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report electronically when an injured employee is receiving full salary instead of indemnity benefits. Proposed amended §124.2(c) instructs insurance carriers to report according to the requirements of new Subchapter B.

The proposal amends §124.2(e)(7)(A) by removing "Employer's First Report of Injury or a Supplemental Report of Injury (if the report included" because an insurance carrier may receive information about salary continuation for an injured employee through sources other than a first or supplemental report of injury. The proposal also amends §124.2(e)(7)(A) by clarifying that salary continuation should be reported when the insurance carrier is not initiating temporary income benefits.

The proposal amends §124.2(e)(7)(B) by changing "of full salary" to "salary" to align rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

The proposal amends §124.2(e)(7) by adding new §124.2(e)(7)(C) to clarify that an insurance carrier must notify DWC electronically of employer continuation of salary equal to or exceeding the employee's average weekly wage within 10 days of resuming payment of the employer's salary continuation. The amendment aligns rule language with the updated methodology for reporting salary continuation in the claim EDI Release 3.1.4 standard.

The proposal adds new §124.2(e)(8) to specify that the insurance carrier must notify DWC and the claimant of lump sum payments of income or death benefits within 10 days of making the payment. The new claim EDI Release 3.1.4 reporting standard now allows the insurance carrier to provide DWC with information identifying the type or reason for the lump sum payment. Insurance carriers will also be required to use a new plain language notice that specifically notifies an injured employee or beneficiaries about the lump sum payment of income or death benefits.

The proposal adds new §124.2(e)(9) to specify that the insurance carrier must notify DWC and the claimant of the insurance carrier's refusal to pay accrued income benefits due to dispute of disability. The new claim EDI Release 3.1.4 reporting standard will require the insurance carrier to notify DWC that accrued temporary income benefits are not being paid, due to a dispute of disability.

The proposal amends 124.2(k)(1) by adding "or dispute of disability" requiring the insurance carrier to provide DWC with a written copy of the notice provided to the claimant, in addition to the electronic filing requirement, when the insurance carrier disputes disability.

The proposal amends §124.2(m) by removing the subsection because requirements related to transmission of acknowledgements and the correction of errors by the insurance carrier are included in new Subchapter B.

The proposal amends §124.2 by removing §124.2(o) and (p) concerning the ability of an insurance carrier to request a waiver of the electronic filing requirement for the employer's FROI. Insurance carriers have reported claim information electronically since 1994, and DWC will not be waiving the claim EDI Release 3.1.4 filing requirements or accepting claim reporting in hard copy or paper format. Insurance carriers with a low annual volume of claim transactions will have access to the designated data collection agent's web portal to manually enter claim EDI reporting.

The proposal amends §124.2(r)(1) by clarifying that proposed §124.2(r)(1)(A) - (F) are claim service administration functions with contact information that must be reported to DWC. The proposal also amends §124.2(r)(1) by adding workers' compensation health care network contact information as claims service information that must be reported to DWC. The contact information for an insurance carrier's claims service administration functions is provided to the public through DWC's Workers' Compensation Coverage Verification portal and DWC's claims system, TXCOMP. Adding workers' compensation health care network contact information will allow system participants and DWC staff to more easily verify whether an injured employee receives health care through a workers' compensation certified network or whether the claim involves medical benefits provided through a political subdivision that contracts directly with a health care provider or through a health benefits pool under Labor Code §504.053.

The proposal adds new subsection (p) to clarify that the section is effective July 26, 2023, to align with the effective date of the claim EDI requirements in new proposed Chapter 124, Subchapter B.

Section 124.100 concerns applicability of the insurance carrier claim EDI reporting and notification requirements. Proposed new §124.100 clarifies that the subchapter applies to all insurance carriers as defined in Labor Code §401.011(27) and requires all insurance carriers to report information prescribed by the commissioner for each workers' compensation claim. Labor Code §401.011(27) defines the term insurance carrier, and it means insurance companies, certified self-insurers, certified self-insured groups, and governmental entities that self-insure. The proposed section also provides the effective date for the new reporting requirements and requires insurance carriers to submit claim EDI records to DWC under the current IAIABC Release 1.0 before the effective date.

DWC received 15 comments on the second informal proposal from insurance carriers, claim administrators, and EDI vendors about the time needed to prepare to report data in the claim EDI Release 3.1.4 format. Eleven commenters said they would need one year or less to modify their systems, three commenters said they would need one and half to two years, and one commentor said they would need more than two years. DWC considered these comments, as well as feedback from DWC's data collection agent, when determining the effective date of the reporting requirements.

Section 124.101 concerns the purpose of the insurance carrier claim EDI reporting and notification requirements. Proposed new §124.101 clarifies that the purpose of the subchapter is to prescribe the reporting requirements for the information and

claim EDI data to be submitted to DWC. The proposed section is important for the relationship among the provisions of Labor Code §402.82, which require DWC to maintain information on every compensable injury; the provisions of Labor Code §411.012, which require DWC to maintain a repository for statistical information on workers' health and safety; the provisions of Labor Code §411.032, which allow DWC to require the submission of this type of data; and Labor Code §414.003, which requires DWC to compile, maintain, and use statistical and other information as necessary to detect practices or patterns of misconduct by system participants.

Section 124.102 concerns definitions associated with the insurance carrier claim EDI reporting and notification requirements. Proposed new §124.102 defines specific terms used in this subchapter. The term "division" means the Texas Department of Insurance, Division of Workers' Compensation or its data collection agent. This is significant because DWC has designated a data collection agent, which means that an insurance carrier fulfills its requirement to report claim EDI data to DWC when it reports to DWC's designated data collection agent. The term "trading partner" also recognizes that an insurance carrier may send the data to DWC directly or may contract with an external entity to fulfill its data reporting requirements.

Section 124.103 concerns reporting IAIABC reporting standards adopted by reference necessary for successful claim EDI reporting and transaction processing. Proposed new §124.103(a) specifically adopts the IAIABC Claim EDI Implementation Guide for Claims, Release 3.1.4, dated January 1, 2021, published by the IAIABC. The IAIABC Claim EDI Implementation Guide for Claims allows individual jurisdictions to tailor certain data usage descriptions to their regulatory requirements.

Proposed new §124.103(b)(1) specifically adopts the Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0, published by DWC. The Texas implementation guide provides a history of claim EDI reporting in Texas, relevant statutory authority, and detailed information about the role of the claim EDI compliance coordinator, including reports available to help them monitor reporting compliance. The Texas implementation guide also contains details about the technology requirements for sending and receiving transactions from the designated data collection agent and the testing process that an insurance carrier or trading partner must complete before submitting claim EDI in production.

Proposed new §124.103(b) also specifically adopts by reference three different tables published by DWC that must be used in conjunction with the IAIABC Claim EDI Release 3.1.4 Implementation Guide to successfully transmit claim EDI records to DWC. Proposed new §124.103(b)(2) specifically adopts the Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0, published by DWC. This table contains data elements used in Texas' FROI and subsequent report of injury (SROI) record layouts, defines required and conditional data elements and how data edits apply to the elements, and details the requirements for reporting those data elements by maintenance type code (MTC) with migration and match data considerations.

Proposed new §124.103(b)(3) specifically adopts the Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, dated June 30, 2022, published by DWC. The table contains the edits applied to Texas' FROI and SROI record data elements, including error messages, which notify the sender the nature of the error associated with the data element and whether the error is required to be fixed before submitting other transactions. The table also defines valid data element values, which define what code values are valid for the data element. The edit matrix also details match data information, which defines the data elements that must be used as primary or secondary match data elements to identify a transaction as a new claim to create or match to an existing claim for duplicate checking, updating, and processing. The table also contains population restrictions, which define the limitation values or conditions for the match data and sequencing requirements, which define the order the sender must send transactions for the claim events described with an MTC. Claim EDI records that do not meet these edits may result in the rejection of specific transactions. DWC will publish a finalized edit matrix on June 30, 2023, which is after the end of the testing period. This will allow DWC and the Insurance Services Office, Inc. (ISO) to make minor corrections to the edit process discovered during trading partner testing.

Proposed new §124.103(b)(4) specifically adopts the Texas Claim EDI Release 3.1.4 Event Table, Version 1.0, published by DWC. The table contains the reportable claim events for Texas' FROI and SROI records and timeframes for reporting the information. Specifically, the table relates EDI information and the circumstances under which a report should be initiated. The table also indicates what communication must be sent to the injured employee as detailed in §124.2, concerning Insurance Carrier Notification Requirements.

Proposed new §124.103(c) provides the location of the adopted tables on DWC's website. Proposed new §124.103(d) provides that the provisions of the Labor Code and DWC rules prevail in the event of any conflict with the contents of the IAIABC EDI Implementation Guide.

Section 124.104 concerns reporting requirements for insurance carrier claim EDI reporting. Proposed new §124.104(a)(1) - (3) require insurance carriers to timely and accurately submit claim EDI records and list the conditions necessary for a record to be considered accurate. Proposed new §124.104(b) sets the requirement for correcting and resubmitting claim EDI records accepted with errors, including the requirement to use the same insurance carrier claim number as the previously accepted claim EDI record. The current 90-day timeframe for correcting and resubmitting previously submitted claim EDI records under 28 TAC §102.5(e)(2) is revised to 30 days, which aligns the timeframe for correcting claim EDI records with the timeframe for correcting medical EDI records submitted under §134.804(c). The insurance carrier must correct the records within 30 days of receiving the EDI acknowledgement of the acceptance with errors or receiving other notice or communication from DWC requiring the correction. Proposed new §124.104(c) specifies that receipt of a rejection does not change the date a transaction must be reported to DWC and details the requirement to use the same insurance carrier claim number as the previously rejected claim EDI record.

Section 124.105 concerns records required to be reported through claim EDI. Proposed new §124.105(a) identifies the events that require an insurance carrier to submit a claim EDI record. Proposed new §124.105(b) outlines additional conditions that must be met for a claim EDI record to be accurately and timely received. This subsection informs insurance carriers about the accuracy requirements and addresses certain data elements that cannot be validated through technical edits and may result in an accepted record during incoming transaction processing. This section clarifies that the data required to be submitted to DWC must reflect the actual data contained on the

claim, not derived or modified data. Proposed new §124.105(c) clarifies that claim EDI records submitted in the test environment are not considered received, regardless of whether the records were accepted or rejected. Proposed new §124.105(c) provides that claims with a date of injury on or after January 1, 1991, must be reported according to the requirement of Chapter 124, concerning Insurance Carriers: Notices, Payments, and Reporting.

Section 124.106 concerns records excluded from reporting through claim EDI. Proposed new §124.106 identifies the types of records that are not required to be reported under the subchapter. Proposed new §124.106(b) specifically excludes claims that do not meet the requirements of §124.2(b), and this provision mirrors the requirement in new proposed §124.105(a)(1). Proposed new §124.106(d) specifically excludes claims with dates of injury before January 1, 1991, and this provision mirrors the requirement in new proposed §124.105(d) to report claims with dates of injury on or after that date.

Section 124.107 concerns state specific requirements for claim EDI reporting. Proposed new §124.107(a)(1) - (5) specify that Texas state specific reporting requirements are allowed and contained in the implementation guides and tables adopted by reference in proposed new §124.103(a) and (b), concerning reporting standards. The IAIABC Claim EDI Implementation Guide allows individual jurisdictions to tailor certain data usage descriptions to their regulatory requirements.

Proposed new §124.107(b) clarifies the claim EDI reporting requirement when the injured employee's Social Security number is unknown. This subsection requires reporting of an unknown Social Security number in accordance with Texas EDI Claim Release 3.1.4 Element Requirement Table, Version 1.0, as required by §124.103. Specifically, the reporting requirement provides that, when a Social Security number is unknown, one of the following is required: employment visa number, green card number, passport number, individual taxpayer identification number, or the employee ID assigned by the jurisdiction.

Section 124.108 concerns insurance carrier EDI compliance coordinators and trading partners. Proposed new §124.108(a) provides that insurance carriers may contract with trading partners to submit required claim EDI records to DWC. Proposed new §124.108(b) requires each insurance carrier to designate an EDI compliance coordinator to serve as the central compliance control contact for data reporting. DWC will modify an existing form for this purpose. The insurance carrier's EDI compliance coordinator must be an employee of the insurance carrier with knowledge and experience in EDI reporting, who is responsible for EDI reporting. This requirement mirrors a similar requirement in 28 TAC §134.808 for an insurance carrier to designate an EDI compliance coordinator for medical EDI submissions. The proposed new §124.108(b) provides flexibility to allow an insurance carrier to use the same EDI compliance coordinator for both claim and medical EDI. The insurance carrier may not delegate this responsibility to an external entity, such as a trading partner. Proposed new §124.108(c) outlines the process for notifying DWC who will send data on behalf of an insurance carrier, whether it is the insurance carrier or a trading partner. This subsection outlines the requirements to be contained in the notice, including the signature of the insurance carrier's EDI compliance coordinator. The subsection also describes the potential consequence of rejection of claim EDI records for not reporting updated information timely.

Proposed new §124.108(d) outlines the process for notifying DWC about an insurance carrier's or trading partner's EDI profile. This information is used by DWC and the designated data collection agent to set up the technical infrastructure to allow an entity to submit claim EDI transmissions. Proposed new §124.108(e) outlines the requirements related to testing before an insurance carrier or trading partner will be approved for production submissions. Proposed new §124.108(e) clarifies that DWC will not approve an insurance carrier or trading partner for production submissions until the insurance carrier or trading partner has met the requirements for testing as described in the Texas Claim EDI Release 3.1.4 Implementation Guide. Proposed new §124.108(f) also clarifies that, once an insurance carrier or trading partner has met the testing requirements in the Texas Claim EDI Release 3.1.4 Implementation Guide, they are approved to report claim EDI. Only approved insurance carriers or trading partners may report claim EDI data.

Proposed new §124.108(g) specifies that DWC may suspend the ability for an insurance carrier or trading partner to report claim EDI if it does not meet the requirements for an approved trading partner as described in the Texas Claim EDI Release 3.1.4 Implementation Guide. Proposed new §124.108(h) specifies that loss of approval to report claim EDI does not relieve an insurance carrier of the duty to report claim information or notices to DWC under §124.2, concerning Insurance Carrier Reporting and Notification Requirements. These two provisions stress the importance of insurance carriers and trading partners filing timely and accurate information. Insurance carriers and trading partners must promptly address technology and system issues that affect their ability to remain in compliance with the claim EDI reporting and notices requirements.

Proposed new §124.108(i) specifies that insurance carriers are responsible for the acts or omissions of their trading partners, and an insurance carrier commits an administrative violation if its trading partner fails to timely or accurately submit claim EDI records. Proposed new §124.108(j) specifies the date that an insurance carrier must provide the EDI compliance coordinator's contact information to DWC. The subsection also specifies that an insurance company that obtains a certificate of authority to write workers' compensation insurance in Texas or an employer or group of employers who are authorized to self-insure by DWC or the Texas Department of Insurance (TDI) after the adoption date of the rule must provide the compliance coordinator's contact information no later than the 30th day after the insurance company's certificate of authority or authorization to self-insure becomes effective.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Business Process Joseph McElrath 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 enforcing or administering the sections, other than that imposed by the statute because local governments are not involved in enforcing or administering the rule. Local and state government entities, when acting in the capacity of an insurance carrier, will be impacted in the same manner as other insurance carriers that are required to comply with the proposed amendments and new rule, as described later in this preamble. There will be no measurable effect on local employment or the local economy because of the new subchapter. The amendments to Chapter 124 reflect other changes made to proposed amended Chapter 102, concerning Practices and Procedures--General Provisions, and proposed Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and do not impose any

additional requirements that could produce a fiscal impact. The new subchapter reflects other changes made to proposed amended §§102.4, 102.5, and 102.8, concerning General Rules for Non-Division Communications, General Rules for Written Communications to and from the Division, and Information Requested on Written Communications to the Division, and proposed amended §124.2, concerning Insurance Carrier Reporting and Notification Requirements, and do not impose any additional requirements that could produce a fiscal impact.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner McElrath expects that administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033, and ensuring that DWC has the best available data to effectively monitor the workers' compensation system. Using updated national data reporting standards that meet DWC's business needs will improve the quality of data reported. DWC uses claim EDI data for multiple administrative and regulatory activities, such as system monitoring and research activities under Labor Code Chapter 405, administering DWC's performance based oversight activities under Labor Code Chapter 402, monitoring compliance with indemnity payment requirements under Chapter 414, generating agency performance measures, and producing required legislative reports.

The accuracy of claim EDI data impacts whether individual records can be included in the research and analysis of certain workers' compensation research questions. For example, DWC currently uses a proxy date for the injured employee's benefit accrual date. The updated IAIABC claim EDI Release 3.1.4 standard provides new codes and data elements related to reporting intermittent lost time from work, which will allow DWC to report more accurate information about when income benefits accrue. Also, the updated IAIABC claim EDI Release 3.1.4 standard allows DWC to understand early in a claim whether an injured employee is in a health care network. This reduces the number of additional communications and verifications DWC must engage in with insurance carriers when processing certain administrative requests, such as change of treating doctor requests and required medical exam requests.

The updated IAIABC claim EDI Release 3.1.4 standard also allows DWC to respond to stakeholder questions and requests; detect special categories of claims; collect information about employer payments; and collect the details of any adjustments, credits, and redistributions of indemnity benefit payments more quickly and efficiently.

The improvements to the quality of data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes. The IAIABC no longer updates the IAIABC Release 1.0 claim EDI standard. DWC's current use of this outdated standard decreases its ability to leverage the data collection methods in the most current claim EDI standard. In addition, the IAIABC actively encourages jurisdictions to adopt the most current standard for claim EDI reporting, which decreases the need for reporting entities to maintain their systems with multiple versions of the reporting standard and increases efficiencies for those entities.

Deputy Commissioner McElrath expects that the proposed amendments may impose an economic cost on persons required to comply with the amendments. Insurance carriers and trading partners may experience costs to modify their automated systems to report claim EDI data using the IAIABC Release 3.1.4 reporting standard. While some commercial insurance carriers, self-insured employers, and trading partners already report claim EDI data in other jurisdictions using the IAIABC Release 3.1 reporting standard, they will likely need to modify their systems to comply with Texas-specific reporting requirements allowed by the IAIABC reporting standards. The costs associated with the reporting requirements in IAIABC Release 3.1 will vary based on the number of transactions submitted and whether the insurance carriers use contracted trading partners to report the required data or report the required data in-house. This analysis considers the cost of an insurance carrier to implement the required reporting requirements in-house because the insurance carrier is ultimately responsible for reporting the data, and the in-house reporting method is available to every insurance carrier. The proposal does not require this method, and other methods of compliance may be available to the insurance carrier. The method of compliance and ultimate cost of compliance is a business decision of the insurance carrier and not a requirement of this proposal.

DWC received 13 comments on the second informal proposal from insurance carriers, claim administrators, and EDI vendors about the estimated cost for modifying their systems to report data in the claim EDI Release 3.1 format. Eight commenters said their cost was less than $50,000, one commenter said their cost was between $50,000 and $100,000, two commenters said their cost was greater than $300,000, and two commenters said their cost was unknown.

Entities may need an automation development project to design the changes; modify their existing database; modify the extract, transform, and load processes; and test the changes before implementation. For insurance carriers and trading partners not already reporting claim EDI data in other jurisdictions using the IAIABC Release 3.1 reporting standard and not using a third party to report the information, DWC estimates that this type of automation project will require about 9,400 hours of work. According to the Texas Wages and Employment Projections at the Labor Market and Career Information Department of the Texas Workforce Commission and the Occupational Employment Statistics at the U.S. Bureau of Labor Statistics, computer programmers receive a median wage of $47 per hour.

The cost to implement these automation changes for insurance carriers and trading partners not already reporting claim EDI data in other jurisdictions using the IAIABC Release 3.1 reporting standard and not using a third party to report the information equals $441,800 (9,400 hours times $47 per hour.)

As an alternative to modifying their own claims management system, insurance carriers may choose to contract with a trading partner that already uses the IAIABC Release 3.1 reporting standard. The trading partner can transform the insurance carriers' claims data to the Release 3.1 reporting format and report the data to DWC on their behalf. Trading partners are able to offer economies of scale for Release 3.1 reporting to insurance carriers. The insurance carrier may be able to save significantly on the cost of updating their claims systems to report the claim data on their own, depending on the contracted rate with the vendor.

Insurance carriers and trading partners that have not implemented systems that comply with the current Texas Claim EDI Implementation Guide will experience more programming and development costs, but those changes are not related to the requirements contained in the new sections.

New notice requirements related to the insurance carrier EDI coordinator and other trading partner relationship notification will introduce a new business process for insurance carriers. Since insurance carriers have a similar requirement related to medical EDI reporting, DWC does not anticipate that any insurance carrier will need to hire more staff to perform similar functions related to claim EDI reporting. However, the new forms and processes will require staff time to complete the required paperwork and associated retention or validation activities. Each individual insurance carrier will be required to complete and submit the new forms shortly after adoption. DWC estimates that the completion of these forms will require about four hours of staff time, including research on existing relationships and documenting current relationships. DWC assumes that an insurance adjuster will likely be assigned to perform these types of activities due to the detailed knowledge that may be needed related to the business activities of claims management. According to the Texas Wages and Employment Projections at the Labor Market and Career Information Department of the Texas Workforce Commission and the Occupational Employment Statistics at the U.S. Bureau of Labor Statistics, claims adjusters receive a median wage of $32 per hour. DWC estimates that the cost of initial compliance with the notice provisions would be four (hours) times $32 (median wage), or $128.

Labor Code §401.024 allows the commissioner of workers' compensation to designate and contract with one or more data collection agents to fulfill the data collection requirements of the Texas Workers' Compensation Act. The statute also allows a data collection agent to collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier. A reporting insurance carrier, other than a governmental entity, must pay the fee to the data collection agent for the data collection services the data collection agent provides. Reporting claim EDI to the designated data collection agent is the same as reporting to DWC, as provided by 28 TAC §124.102, concerning Definitions. No affiliation or membership fee will be required of insurance carriers or reporting companies for Texas claim EDI data collection services during the period of the data collection agent designation.

The commissioner of workers' compensation designated ISO/Verisk as DWC's data collection agent for claim EDI data by Commissioner's Order Number 2021-6929 on July 19, 2021. Insurance carriers, other than governmental entities, must pay the data collection agent an annual fee to submit claim EDI data, unless they submit the required reporting through the data entry portal at no cost.

DWC does not anticipate any other additional costs after implementation for governmental entities. Any costs, other than fees paid to the data collection agent by insurance carriers other than governmental entities, in later fiscal years would be restricted to standard system maintenance and notification processes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed rules will not have an adverse economic effect or a disproportionate economic impact on small micro businesses or on rural communities. These rules mostly impact insurance carriers and small businesses have a no cost option. As of 2019, DWC identified 144 insurance carriers that had less than $6 million total direct written premium nationally for workers' compensation insurance. These insurance carriers writing workers' compensation insurance in Texas meet the definition of a small business under Government Code §2006.001(2). As a result, and in accordance with Government Code §2006.002(c), DWC is required to prepare a regulatory flexibility analysis.

Small businesses will have the option of submitting the required reporting through the data entry portal at no cost. If a small business chooses to use this portal, they will not incur the costs associated with updating their claims system to automatically report the claim information this proposal requires.

DWC also considered exempting small businesses from all or part of the rule. Exempting small businesses from some or all of the rule would not be consistent with the Labor Code's requirement under §411.032, which provides that an employer must file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. DWC also considered separate compliance or reporting requirements for small businesses.

These rules will impact political subdivisions that self-insure their workers' compensation responsibilities. This includes rural political subdivisions. DWC has determined that the proposal will not impose an adverse impact to rural communities.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal may impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed amended §124.2 and Chapter 124 new Subchapter B are necessary to implement legislation. The proposed rule implements Labor Code §401.024, enacted by HB 2511, 76th Legislature, Regular Session (1999) and amended by SB 800, 82nd Legislature, Regular Session (2011), and Labor Code §§402.082, 411.012, 411.031, 411.032, and 411.033, enacted by HB 752, 73rd Legislature, Regular Session (1993).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC 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;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit, or repeal an existing regulation;

- increase or decrease the number of individuals subject to the rule's applicability; or

- positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and 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. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on January 24, 2022. Send your

comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. 12050, Austin, Texas 78711.

The commissioner of workers' compensation will also consider written and oral comments on the proposal in a virtual public hearing 10 a.m., Central time, on January 18, 2022.

SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF PAYMENT

28 TAC §124.2

STATUTORY AUTHORITY. DWC proposes amended §124.2 under Labor Code §§401.024, 402.00111, 402.00116, 402.021, 402.061, 402.082, 411.012, 411.031, 411.032, 411.033, and 414.003.

Labor Code §401.024 allows the commissioner of workers' compensation to require the use of an electronic transmission; prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability; and designate and contract with one or more data collection agents to fulfill claim data collection requirements. The section also provides that a data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier. The section also provides that the commissioner of workers' compensation may adopt rules necessary to implement the section.

Labor Code §402.00111 provides that the commissioner of workers' compensation must exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation must administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.021 provides the basic goals of the workers' compensation system and specifically directs that the system take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

Labor Code §402.061 provides that the commissioner of workers' compensation must adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §402.082 provides that DWC must maintain information on every compensable injury as to the race, ethnicity, and sex of the injured employee; the classification of the injury; identification of whether the injured employee is receiving medical care through a workers' compensation health care network certified under Insurance Code Chapter 1305; the amount of wages earned by the injured employee before the injury; and the amount of compensation received by the injured employee.

Labor Code §411.012 provides that DWC must collect and serve as a repository for statistical information on workers' health and safety. The section requires DWC to analyze and use that information to identify and assign priorities to safety needs, and better coordinate the safety services provided by public or private organizations, including insurance carriers. The section also provides that DWC must coordinate or supervise the collection by state or federal entities information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

Labor Code §411.031 provides that DWC must maintain a job safety information system and obtain from any appropriate state agency, including the Texas Workforce Commission, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services, data and statistics, including data and statistics compiled for rate-making purposes.

Labor Code §411.032 provides that an employer must file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. The section also requires the commissioner of workers' compensation to adopt rules and prescribe the form and manner of reports filed under the section. The section also provides that an employer commits an administrative violation if it fails to report to DWC as required unless the commissioner determines good cause exists for the failure.

Labor Code §411.033 provides that the job safety information system required in §411.031 must include a comprehensive database that incorporates all pertinent information relating to each injury reported under §411.032, including the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee; the nature, source, severity, and cause of the injury and any equipment involved; the part of the body affected; the number of prior workers' compensation claims by the employee; the prior loss history of the employer; the standard industrial classification code of the employer; the classification code of the employer; and any other information considered useful for statistical analysis.

Labor Code §414.003 provides that DWC must compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons that violate Subtitle A of the Labor Code, commissioner rules, or a commissioner order or decision; or otherwise adversely affect the workers' compensation system. DWC must use the information compiled to impose appropriate penalties and other sanctions.

CROSS-REFERENCE TO STATUTE. Section 124.2 implements Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033.

§124.2. Insurance Carrier [~~Reporting and~~] Notification Requirements.

(a) An insurance carrier must [~~shall~~] notify the division and the claimant of actions taken on or events occurring in a claim as required by this title.

[~~(b) The division shall prescribe the form, format, and manner of required electronic submissions through publications such as advisory(ies), instructions, specifications, the Texas Electronic Data Interchange Implementation Guide, and trading partner agreements. Trading partners will be responsible for obtaining a copy of the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange Implementation Guide.~~]

(b) [~~(c)~~] The insurance carrier must [~~shall~~] electronically file, as that term is used in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Division [~~Commission~~]), with the division, according to the requirements in Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data Interchange Reporting to the Division):

(1) the information from the original Employer's First Report of Injury; the insurance carrier's Federal Employer Identification Number (FEIN); and the policy number, policy effective date, and policy expiration date reported under §110.1 of this title (concerning Insurance Carrier Requirements for Notifying the Division of Insurance Coverage) for the employer associated with the claim, not later than the seventh day after the later of:

(A) receipt of a required report where there is lost time from work, [or] an occupational disease, or a fatality; or

(B) notification of lost time if the employer made the Employer's First Report of Injury before [prior to] the employee experienced [experiencing] absence from work as a result of the injury;

(2) information about an acquired claim no later than the 37th day after the acquiring claim administrator has knowledge of claim-specific information from the previous claim administrator;

(3) [(2)] any correction of an [division-identified errors in a previously accepted] electronic record accepted with errors, as provided in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Division), within 30 days of the notification from the division detailed in §124.104(b) of this title (concerning Reporting Requirements) [(Correction)];

(4) [(3)] information about [regarding] a compensable death with no beneficiary no [(Compensable Death No Beneficiaries/Payees) not] later than the 10th day after determining that an employee whose injury resulted in death had no legal beneficiary; and

(5) [(4)] a change in an electronic record initiated by the insurance carrier [(Change)], the coverage information required by paragraph (1) of this subsection if not available when the First Report of Injury was submitted to the division, and any change in a claimant or employer mailing address within seven days of receiving [receipt of] the new address.

(c) [(d)] The insurance carrier must [shall] notify the division and the claimant of its [a] denial of a claim [(Denial)] based on noncompensability [non-compensability] or lack of coverage in accordance with this section and as otherwise provided by this title.

(d) [(e)] The insurance carrier must [shall] notify the division and the claimant of the following:

(1) first payment of indemnity benefits on a claim [(Initial Payment)] within 10 days of making the first payment;

(2) first payment of indemnity benefits on an acquired claim within 10 days of making the first payment;

(3) [(2)] a change in the net benefit payment amount without a change to the benefit type [caused by a change in the employee's post-injury earnings (Reduced Earnings)] within 10 [ten] days of making the first payment reflecting the change;

[(3) change in the net benefit payment amount that was not caused by a change in employee's post-injury earnings, this includes but is not limited to subrogation, attorney fees, advances, and contribution (Change in Benefit Amount), and the notice must be made within 10 days of making the first payment which reflects the change;]

(4) a change from one income benefit type to another or to death benefits [(Change in Benefit Type)] within 10 days of making the first payment reflecting the change;

(5) resumption of payment of income or death benefits [(Reinstatement of Benefits)] within 10 days of making the first payment;

(6) termination or suspension of income or death benefits [(Suspension)] within 10 days of making the last payment for the benefits; [or]

(7) employer continuation of salary, as defined in §129.1(1) (concerning Definitions for Temporary Income Benefits) of this title, equal to or exceeding the employee's average weekly wage [Average Weekly Wage] as defined by this title [(Full Salary)] within:

(A) seven days of receiving [receipt of] the [Employer's First Report of Injury or a Supplemental Report of Injury (if the report included] information that salary would be continued in lieu of [) if] the insurance carrier initiating [has not initiated] temporary income benefits; [or]

(B) ten [10] days of making the last payment of temporary income benefits due to the employer's salary continuation; or [of full salary.]

(C) ten days of resuming payment of the employer's salary continuation;

(8) lump sum payment of income or death benefits within 10 days of making the payment; or

(9) refusal to pay accrued income benefits due to dispute of disability.

(e) [(f)] If an insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, and [or] Emergency Medical Technicians), the insurance carrier must [shall] take one of the following actions no later than the 15th day after receiving [following receipt of] the notice of injury:

(1) initiate benefits as required by the Texas Workers' Compensation Act and the division's rules;

(2) file a notice of denial as described in this section; or

(3) provide the claimant and the division with notice as required under Labor Code §409.021(a-3) (Notice of Continuing Investigation) for a claim for benefits received on or after June 10, 2019.

(f) [(g)] When applying subsection (e) [(f)] of this section and Government Code, Chapter 607, Subchapter B, a "claim for benefits" means the first written notice of injury as provided in §124.1 of this title (concerning Notice of Injury).

(g) [(h)] The insurance carrier must [shall] issue a Notice of Continuing Investigation as a plain language notice in the form and manner prescribed by the division. The notification requirements of this section are not considered complete until a copy of the notice provided to the claimant is received by the division.

(1) A Notice of Continuing Investigation must [shall] include the following:

(A) a statement describing all steps taken by the insurance carrier to investigate the disease or illness before the notice was given;

(B) a list of any claim-specific evidence, releases, or documentation the insurance carrier reasonably believes is both relevant and necessary to complete its investigation; and

(C) contact information for the adjuster, including the adjuster's email address, fax [facsimile] number, and telephone number.

(2) An insurance carrier must [shall] provide a reasonable amount of time for a claimant to respond to the notice.

(3) The notice may not include a request for additional diagnostic testing, mental health records, generic requests (such as "the claimant's medical records"), or requests for records that are not directly related to either the disease or illness or eligibility for application of a statutory presumption.

(4) Notwithstanding the issuance of a Notice of Continuing Investigation, an insurance carrier must continue taking reasonable steps to acquire claim-specific information necessary to complete its investigation of the claim.

(h) [~~(i)~~] Notification to the claimant as required by subsections (c) - (e) [~~(d)~~ - ~~(h)~~] of this section requires the insurance carrier to use plain language notices in the form and manner prescribed by the division. These notices must [~~shall~~] provide a full and complete statement describing the insurance carrier's action and rationale. The statement must contain sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim. A generic statement that simply states the insurance carrier's position with phrases such as "employee returned to work," "adjusted for light duty," "liability is in question," "compensability in dispute," "under investigation," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(i) [~~(j)~~] In addition to the denial notice requirements in subsection (h) [~~(i)~~], if the insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, and [~~or~~] Emergency Medical Technicians), the denial must also include the following:

(1) if [~~If~~] the insurance carrier asserts that a statutory presumption does not apply, a statement explaining why and describing the claim-specific information that the insurance carrier reviewed; [~~.~~]

(2) alternatively, [~~Alternatively,~~] based on [~~upon~~] its investigation, if the insurance carrier concludes that a statutory presumption applies, but [~~that~~] a notice of denial will be issued, a statement explaining why and describing the claim-specific information reviewed before issuing [~~prior to issuance of~~] the notice[~~,~~] that supports a reasonable belief that risk factors, accidents, hazards, or other causes not associated with their employment were a substantial factor in bringing about the injured employee's disease or illness, without which the disease or illness would not have occurred; and [~~.~~]

(3) if [~~If~~] the insurance carrier provided a timely Notice of Continuing Investigation as permitted by law, the denial notice must also include a statement describing whether the claimant provided a timely response to the notice.

(j) [~~(k)~~] Notification to the division as required by subsections (b) - (e) [~~(c)~~ - ~~(h)~~] of this section requires the insurance carrier to use electronic filing, as that term is used in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Division [~~Commission~~]) with the division, according to the requirements in Subchapter B of this title (concerning Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

(1) In addition to the electronic filing requirements of this subsection, when an insurance carrier notifies the division of a denial, Notice of Continuing Investigation, or dispute of disability as required by this section, it must provide the division a written copy of the notice provided to the claimant as described under subsections (g) - (i) and (k) [~~(i)~~ - ~~(j)~~] of this section, as applicable.

(2) The notification requirements of this section are not considered completed until the copy of the notice provided to the claimant is received by the division.

(k) [~~(l)~~] Notification to the division and the claimant of a dispute of disability, extent of injury, or eligibility of a claimant to receive death benefits must [~~shall~~] be made as otherwise prescribed by this title and requires the insurance carrier to use plain language notices in the form and manner prescribed by the division. These notices must [~~shall~~] provide a full and complete statement describing the insurance carrier's action and its reasons [~~reason(s)~~] for such action. The statement must contain sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim. A generic statement that simply states the insurance carrier's position with phrases such as "no medical evidence to support disability," "not part of compensable injury," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

[~~(m) The division shall send an acknowledgment to the transmitting trading partner detailing whether an electronically submitted record was accepted, accepted with errors, or rejected. The acknowledgment shall be provided directly to the trading partner submitting the transmission, not through the Austin representative box identified in §102.5 of this title. If the record was accepted with errors in conditional elements, the insurance carrier must correct the errors in accordance with §102.5 of this title.~~]

(l) [~~(n)~~] Except as otherwise provided by this title, insurance carriers must [~~shall~~] not provide notices to the division that explain that:

(1) benefits will be paid as they accrue;

(2) a wage statement has been requested;

(3) temporary income benefits are not due because there is no lost time;

(4) the insurance carrier is disputing some or all medical treatment as not reasonable or necessary;

(5) compensability is not denied, but the insurance carrier disputes the existence of disability (if there are no indications of lost time or disability and the employee is not claiming disability); or

(6) future medical benefits are disputed (notices of which must [~~shall~~] not be provided to anyone in the system).

[~~(o) Written requests for a waiver of the electronic filing requirement for the Employer's First Report of Injury may be submitted to the commissioner or their designee for consideration. Waivers must be requested at least annually, and the requests must include a justification for the waiver, the volume of the insurance carrier's claims and total premium amounts, current automation capabilities, Electronic Data Interchange (EDI) programming status, and a specific target date to implement EDI. Waivers require written approval and shall be granted at the discretion of and for the time frame noted by the commissioner or their designee.~~]

[~~(p) If specifically directed by the division, such as through division advisory or the Texas Electronic Data Interchange Guide, the insurance carrier may provide the information required in subsections (c) - (g) of this section to the division in hardcopy or paper format.~~]

(m) [~~(q)~~] Notifications to the claimant and the claimant's representative must [~~shall~~] be filed by fax [~~facsimile~~] or electronic transmission unless the recipient does not have the means to receive such a transmission, in which case, the notifications must [~~shall~~] be personally delivered or sent by mail.

(n) [~~(r)~~] Each insurance carrier must [~~shall~~] provide to the division, through its Austin representative in the form and manner prescribed by the division, the contact information for all workers' com-

pensation claim service administration functions performed by the insurance carrier either directly or through third parties.

(1) The contact information for each function must [~~shall~~] include mailing address, telephone number, fax [~~facsimile~~] number, and email address, as appropriate. This contact information may be provided either in the form of a single Uniform Resource Locator (URL) for a web page created and maintained by the insurance carrier that contains the required information or through an online submission to the division. The claim service administration functions requiring contact information to be reported are:

(A) coverage [~~Coverage~~] verification (policy issuance and effective dates of the policy);

(B) claim [~~Claim~~] adjustment;

(C) medical [~~Medical~~] billing;

(D) pharmacy [~~Pharmacy~~] billing (if different from medical billing); [~~and~~]

(E) preauthorization; and [~~Preauthorization;~~]

(F) workers' compensation health care network.

(2) If the web page option is used, the page must [~~shall~~] contain the date [~~on which~~] it was last updated and an email address or other contact information [~~to which~~] a user may report problems or inaccuracies to.

(3) The insurance carrier must [~~shall~~] update the contact information or URL within 10 working days after any such change is made.

(o) [~~(s)~~] All notices to a claimant required under this section must be stated in plain language and in no less than 12-point font. This subsection applies to notices sent on or after April 1, 2020.

(p) The section is effective July 26, 2023.

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 December 13, 2021.

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Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

SUBCHAPTER B. INSURANCE CARRIER CLAIM ELECTRONIC DATA INTERCHANGE REPORTING TO THE DIVISION

28 TAC §§124.100 - 124.108

STATUTORY AUTHORITY. DWC proposes new §§124.100 - 124.108 under Labor Code §§401.024, 402.00111, 402.00116, 402.021, 402.061, 402.082, 411.012, 411.031, 411.032, 411.033, and 414.003.

Labor Code §401.024 allows the commissioner of workers' compensation to require the use of an electronic transmission; prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability; and designate and contract with one or more data collection agents to fulfill claim data collection requirements. The section also provides that a data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier. The section also provides that the commissioner of workers' compensation may adopt rules necessary to implement the section.

Labor Code §402.00111 provides that the commissioner of workers' compensation must exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation must administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.021 provides the basic goals of the workers' compensation system and specifically directs that the system take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

Labor Code §402.061 provides that the commissioner of workers' compensation must adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §402.082 provides that DWC must maintain information on every compensable injury as to the race, ethnicity, and sex of the injured employee; the classification of the injury; identification of whether the injured employee is receiving medical care through a workers' compensation health care network certified under Insurance Code Chapter 1305; the amount of wages earned by the injured employee before the injury; and the amount of compensation received by the injured employee.

Labor Code §411.012 provides that DWC must collect and serve as a repository for statistical information on workers' health and safety. The section requires DWC to analyze and use that information to identify and assign priorities to safety needs, and better coordinate the safety services provided by public or private organizations, including insurance carriers. The section also provides that DWC must coordinate or supervise the collection by state or federal entities information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

Labor Code §411.031 provides that DWC must maintain a job safety information system and obtain from any appropriate state agency, including the Texas Workforce Commission, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services, data and statistics, including data and statistics compiled for rate-making purposes.

Labor Code §411.032 provides that an employer must file with DWC a report of each on-the-job injury that results in the employee's absence from work for more than one day, or an occupational disease of which the employer has knowledge. The section also requires the commissioner of workers' compensation to adopt rules and prescribe the form and manner of reports filed under the section. The section also provides that an employer commits an administrative violation if it fails to report to DWC as

required unless the commissioner determines good cause exists for the failure.

Labor Code §411.033 provides that the job safety information system required in §411.031 must include a comprehensive database that incorporates all pertinent information relating to each injury reported under §411.032, including the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee; the nature, source, severity, and cause of the injury and any equipment involved; the part of the body affected; the number of prior workers' compensation claims by the employee; the prior loss history of the employer; the standard industrial classification code of the employer; the classification code of the employer; and any other information considered useful for statistical analysis.

Labor Code §414.003 provides that DWC must compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons that violate Subtitle A of the Labor Code, commissioner rules, or a commissioner order or decision; or otherwise adversely affect the workers' compensation system. DWC must use the information compiled to impose appropriate penalties and other sanctions.

CROSS-REFERENCE TO STATUTE. Sections 124.100 - 124.108 implement Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033.

§124.100. Applicability.

(a) This subchapter applies to any claim transactions required to be reported to the division under §124.105 of this title on or after July 26, 2023.

(b) This subchapter applies to all insurance carriers as defined in Labor Code §401.011(27). All insurance carriers are required to report information prescribed by the commissioner under Labor Code §§401.024, 402.082, 411.012, 411.031, 411.032, and 411.033 for each workers' compensation claim. All insurance carriers are required to notify injured employees and the division about claim actions as provided in §124.2 of this title (concerning Insurance Carrier Notification Requirements).

(c) This subchapter is effective July 26, 2023. Insurance carriers and trading partners must continue to submit claim EDI records to the division in the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Electronic Data Interchange (EDI) Release 1.0 standard before this effective date.

§124.101. Purpose.

The purpose of this subchapter is to prescribe the reporting requirements for information and data submitted to the division and adopt by reference the implementation guide and specifications necessary for successful EDI transaction processing. The reporting of information and data is necessary to maintain information on every compensable injury; maintain a repository for statistical information on workers' health and safety; and compile, maintain, and use statistical data to detect practices or patterns of misconduct by system participants as required by Labor Code §§402.082,411.033, and 414.003.

§124.102. Definitions.

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

(1) Application acknowledgment code--A code used to identify the accepted or rejected status of the transaction being acknowledged.

(2) Claim EDI record--The accurate data associated with a single claim reported in a claim EDI transaction (first report of injury or subsequent report of injury) obtained from all sources, including the report of incident or injury and the insurance carrier's claim file.

(3) Claim EDI transmission--The data that is contained within the interchange envelope.

(4) Division--The Texas Department of Insurance, Division of Workers' Compensation or its data collection agent.

(5) EDI--Electronic data interchange.

(6) Edit Matrix--A table containing the edits applied to Texas' first report of injury and subsequent report of injury records.

(7) Element requirement table--A table containing data elements used in Texas' first report of injury and subsequent report of injury record layouts defining required and conditional data elements and how data edits apply to the elements.

(8) Event table--A table containing the reportable claim events for Texas' first report of injury and subsequent report of injury records and timeframes for reporting the information.

(9) Insurance carrier claim number--An identifier that distinguishes a specific claim within an insurance carrier's claim processing system and is used throughout the life of the claim.

(10) IAIABC--The International Association of Industrial Accident Boards and Commissions.

(11) Person--A person, partnership, corporation, hospital district, insurance carrier, organization, business trust, estate trust, association, limited liability company, limited liability partnership, or other entity. This term does not include an injured employee.

(12) Trading partner--A person entering into an agreement with the insurance carrier to format electronic data for transmission to the division, transmit electronic data to the division, and respond to any technical issues related to the contents or structure of an EDI file.

§124.103. Reporting Standards.

(a) Except as provided in this subchapter, the commissioner adopts by reference the IAIABC EDI Implementation Guide for Claims, Release 3.1.4, dated January 1, 2021, published by the IAIABC.

(b) The commissioner adopts by reference the:

(1) Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0;

(2) Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0;

(3) Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, dated June 30, 2023; and

(4) Texas Claim EDI Release 3.1.4 Event Table, Version 1.0. The Texas Claim EDI Release 3.1.4 Implementation Guide, tables, and the matrix are published by the division.

(c) The adopted division tables are on the division's website at www.tdi.texas.gov/wc/edi/index.html.

(d) In the event of a conflict between the IAIABC EDI Implementation Guide for Claims and the Labor Code or division rules, the Labor Code or division rules will prevail.

§124.104. Reporting Requirements.

(a) Insurance carriers must submit timely and accurate claim EDI records to the division. For the purpose of this section, a claim EDI record is considered accurately submitted when the record:

(1) receives an accepted application acknowledgment code;

(2) contains accurate claim EDI data, which may be obtained from all sources, including the report of incident or injury and the insurance carrier's claim file; and

(3) to the extent supported by the format, contains all data elements necessary to identify activity on a claim.

(b) Insurance carriers are responsible for correcting and resubmitting claim EDI records accepted with errors within 30 days of the acknowledgement or other the action that required reporting. The resubmitted claim EDI record must contain the same insurance carrier claim number as the previously accepted claim EDI record.

(c) The insurance carrier's receipt of a rejection does not modify, extend, or otherwise change the date the transaction is required to be reported to the division. The resubmitted rejected claim EDI record must contain the same insurance carrier claim number as the previously rejected claim EDI record.

§124.105. Records Required to be Reported.

(a) Insurance carriers must submit claim EDI records when the insurance carrier:

(1) takes action on or events occur in a claim as described in §124.2 of this title (concerning Insurance Carrier Notification Requirements);

(2) corrects division-identified errors in a previously accepted electronic record as provided in §124.104(b) of this title (concerning Reporting Requirements);

(3) corrects insurance carrier-identified errors in a previously accepted electronic record as provided in §124.2(b)(4) of this title;

(4) discovers that a claim EDI record should not have been submitted to the division, and the division had previously accepted the claim EDI record; or

(5) receives a request from the division for claim EDI records.

(b) Regardless of the application acknowledgment code returned in an acknowledgment, claim EDI records are not considered received by the division if the claim EDI record:

(1) contains data, which does not accurately reflect the code value or actions taken when the insurance carrier processed information or acted on the claim; or

(2) fails to contain a conditional data element and the mandatory trigger condition existed at the time the insurance carrier acted on the claim.

(c) Claim EDI records submitted in the test environment are not considered received and do not comply with the reporting requirements of this section.

(d) Claims with a date of injury on or after January 1, 1991, must be reported in accordance with the requirements of this chapter (concerning Insurance Carriers: Notices, Payments, and Reporting).

§124.106. Records Excluded from Reporting.

Insurance carriers must not report claim EDI records for:

(1) claims where the jurisdiction state is not Texas;

(2) claims that do not meet the requirements of §124.2(b) of this title (concerning Insurance Carrier Notification Requirements);

(3) claims involving benefits payable under federal workers' compensation laws; and

(4) claims with dates of injury before January 1, 1991.

§124.107. State Specific Requirements.

(a) Insurance carriers must submit claim EDI transactions according to the:

(1) IAIABC EDI Implementation Guide for Claims, Release 3.1.4;

(2) Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0;

(3) Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0;

(4) Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, dated June 30, 2023; and

(5) Texas Claim EDI Release 3.1.4 Event Table, Version 1.0.

(b) In addition to the requirements adopted under §124.103 of this title (concerning Reporting Standards), when the injured employee's Social Security number is unknown for reporting claim EDI transactions, it must be reported in accordance with Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0, as adopted in §124.103 of this title.

§124.108. Insurance Carrier EDI Compliance Coordinator and Trading Partners.

(a) Insurance carriers may submit claim EDI records directly to the division or contract with an external trading partner to submit the records on the insurance carrier's behalf.

(b) Each insurance carrier, including those using external trading partners, must designate one person to the division as the EDI compliance coordinator and provide the person's name, working title, mailing address, email address, and telephone number in the form and manner prescribed by the division. The EDI compliance coordinator must:

(1) be an employee of the insurance carrier with knowledge and experience in EDI reporting, who is responsible for EDI reporting;

(2) receive and appropriately disperse data reporting information received from the division; and

(3) serve as the central compliance control for data reporting under this subchapter.

(c) At least five working days before sending its first transaction to the division under this subchapter, the insurance carrier must send a notice to the division. The notice must be in the form and manner prescribed by the division. The notice must include the name of the insurance carrier, the insurance carrier's FEIN, the insurance carrier's TXCOMP customer number, the name of the trading partners authorized to conduct claim EDI transactions on behalf of the insurance carrier, the FEIN of the trading partners, and the EDI compliance coordinator's signature.

(d) The insurance carrier must report changes required under subsections (b) and (c) of this section within five working days of any amendment to data sharing agreements, including adding or removing any trading partners or changing the EDI compliance coordinator. Failure to timely submit updated information may result in the rejection of claim EDI records.

(e) At least five working days before sending its first test transaction to the division under this subchapter, the insurance carrier or

trading partner sending the claim EDI transmission must send a notice to the division. The notice must be in the form and manner prescribed by the division. The notice must include the entity's name; FEIN; nine-digit postal code; address; and the technical contact's name, address, phone number, and email address. The insurance carrier or trading partner must report changes within five working days of any amendment to the information required to be reported.

(f) Insurance carriers and trading partners must successfully complete claim EDI Release 3.1.4 testing before transmitting any production claim EDI Release 3.1.4 data to the division. Trading partners must receive approval to submit data for at least one insurance carrier before initiating the testing process. Insurance carriers and trading partners must submit each transaction type during the testing process to ensure that it can be successfully processed by the division. The division will not approve an insurance carrier or trading partner for production submissions until the insurance carrier or trading partner has met the requirements for testing as described in the Texas Claim EDI Release 3.1.4 Implementation Guide.

(g) Once an insurance carrier or trading partner has met the requirements of subsection (f) of this section, the insurance carrier or trading partner is approved to report claim EDI data to the division. Only approved insurance carriers or trading partners may report claim EDI data to the division.

(h) The division may suspend the ability for an insurance carrier or trading partner to report claim EDI if it does not meet the requirements for an approved trading partner as described in the Texas Claim EDI Release 3.1.4 Implementation Guide. The division will notify the insurance carrier's claim EDI compliance coordinator in writing in advance of the suspension.

(i) Loss of approval to report claim EDI does not relieve an insurance carrier of the duty to report claim information or notices to the division under §124.2 of this title (concerning Insurance Carrier Notification Requirements).

(j) Insurance carriers are responsible for the acts or omissions of their trading partners. The insurance carrier commits an administrative violation if the insurance carrier or its trading partner fails to timely or accurately submit claim EDI records.

(k) An insurance carrier must provide to the division the EDI compliance coordinator's contact information required by this subsection no later than 90 days after the adoption of this subchapter. Except as otherwise provided by this subsection, an insurance company that obtains a certificate of authority to write workers' compensation insurance in Texas after the adoption of this subchapter, or an employer or group of employers who are authorized to self-insure by DWC or TDI after the adoption date of this subchapter, must provide the EDI compliance coordinator's contact information required by subsection (b) of this section to the division no later than the 30th day after the insurance company's certificate of authority or authorization to self-insure becomes effective.

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

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Texas Department of Insurance, Division of Workers' Compensation
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.983

The Texas Parks and Wildlife Department proposes new §57.983, concerning Spotted Seatrout - Special Provisions. The proposed new rule would establish special temporary bag, length, and possession limits for spotted seatrout in specific waters to reflect the department's continuing concern over the impact of Winter Storm Uri in February 2021 on spotted seatrout populations in middle and lower coast bay systems. The proposed new harvest rule is intended to increase spawning potential to allow populations to recover more quickly until pre-freeze levels are re-established.

During the week of February 14th, 2021, Texas experienced extreme winter weather that caused the die-off of an estimated 3.8 million fish coastwide, with at least 61 species affected. Among recreational game fish, spotted seatrout comprised the majority of the mortalities, particularly on the lower coast. In response, the department adopted an emergency rule effective April 1, 2021 (46 TexReg 2527) to protect spotted seatrout in the Upper and Lower Laguna Madre from over-harvest. The emergency rule expired September 27th, 2021; however, the department has determined that there is continuing concern about the status of spotted seatrout populations in those bay systems as well as additional bay systems. The proposed new rule would impose the bag, possession, and length limits identical to those imposed by the emergency rule (minimum length limit of 17 inches, maximum length limit of 23 inches, possession limit of three fish) over a larger geographical area and specify a date certain of August 31, 2023 for those limits to expire, at which time the harvest regulations would revert to the previous limits.

The department manages fisheries resources to ensure sustainability and resilience. Fishery-dependent and independent monitoring programs allow the department to quantify harvest pressure and assess population status with respect to spotted seatrout. Department sampling and monitoring efforts confirmed that the spotted seatrout populations in the areas affected by the emergency rule were impacted significantly by the freeze and show declines from historical averages, but it also confirmed that other areas of the lower coast and mid-coast bays that were not subject to the provisions of the emergency rule are also wor-

thy of concern. Low catch rates during spring gill net surveys indicate declining abundance of spotted seatrout in various areas. Four bay systems had catch rates that were much lower than the ten-year average: Lower Laguna Madre, Upper Laguna Madre, San Antonio, and Matagorda. Spring gill net sampling indicates that catch rates are approximately 34% and 44% below the ten-year mean in San Antonio and Matagorda bays, respectively. Aransas Bay also experienced declines in catch rates of 10 - 12%. Corpus Christi Bay experienced a modest increase in catch rates. While other environmental variables also impact seatrout catch rates, such as lowered salinities due to high spring rainfall, the extent of the declines seen after the freeze mortality indicate that the freeze likely had a large impact on the abundance of spotted seatrout in several of the bay systems. Historical data indicate that gill net catch rates returned to pre-freeze levels within 2-3 years following other major freeze events in the 1980's; accordingly, the proposed new rule would remain in effect until August 31, 2023. The department will continue to conduct assessment and monitoring activities to analyze the impacts of the February 2021 freeze event and recovery of the spotted seatrout population.

The proposed new rule would include all bays from Matagorda Bay to the Lower Laguna Madre to speed recovery of trout populations in the four bay systems most severely impacted, include adjacent bays that were less affected by the freeze but are genetically connected to the vulnerable populations, and include Corpus Christi Bay to prevent negative impacts resulting from increases in fishing pressure resulting from angler effort being shifted from surrounding systems, as well as to reduce angler confusion and aid in law enforcement of the new regulations.

Dakus Geeslin, Science and Policy Branch Chief, Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Geeslin also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state by protecting fisheries resources from depletion.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because spotted seatrout by statute cannot be harvested for commercial purposes and because the proposed rule regulates recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation per se, but will modify an existing regulation; not repeal, expand, or limit a regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rule is in compliance with Government Code, §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposal may be submitted to Dakus Geeslin, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8734; e-mail: cfish@tpwd.texas.gov or via the department's website at http://www.tpwd.texas.gov/.

The new rule is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed new rule affects Parks and Wildlife Code, Chapter 61.

§57.983. Spotted Seatrout - Special Bag, Possession, and Length Limits.

(a) In the waters of the Laguna Madre (upper and lower bay systems), Corpus Christi Bay, Aransas Bay, San Antonio Bay, and Matagorda Bay from the Brownsville Ship Channel and South Bay in Cameron County northward to FM 457 in Matagorda County, and in the waters within the area of a line beginning at the Gulf of Mexico beachfront at FM 457 in Matagorda County and extending perpendicularly from the beachfront for a distance of 500 yards into the Gulf of

Mexico and continuing parallel to the beachfront southward to the convergence of the beachfront and the Rio Grande, the bag and possession limits for the take of spotted seatrout shall be as follows.

(1) Minimum length limit: 17 inches.

(2) Maximum length limit: 23 inches.

(3) Possession limit: 3 spotted seatrout.

(b) To the extent that any provision of this section conflicts with the provisions of §57.981 of this chapter (relating to Bag, Possession, and Length Limits), this section controls.

(c) The provisions of this section cease effect August 31, 2023.

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

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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

31 TAC §57.985

The Texas Parks and Wildlife Department proposes new 31 TAC §57.985, concerning Special Bag, Possession, and Length Limits. The proposed new rule would eliminate the minimum length limit and establish a maximum length limit and special provisions for the harvest of largemouth bass on nine water bodies in response to a department determination that current provisions in TAC were published in error.

Current department publications and public information reflect the bag limit and special provisions intended by the Texas Parks and Wildlife Commission and thus are in conflict with enforceable provisions currently in TAC; therefore, rule action is necessary at this time to ensure that the intended rule is in effect for the remainder of the license year in order to eliminate confusion and enhance compliance and enforcement. The department intends for the proposed new rule to be in effect only until the discrepancy can be corrected in 31 TAC §57.981 as part of the next annual fisheries regulations cycle.

The proposed new section would implement a five-fish, 16-inch maximum length limit with an exemption for temporary possession of 24-inch and larger bass for submission to the ShareLunker program.

Michael Tennant, Regulations and Policy Coordinator in the Inland Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Tennant also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be accurate regulations.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the proposed rule regulates an aspect of recreational license privilege that allows individual persons to pursue and harvest public wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Michael Tennant, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8754; email: michael.tennant@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

Statutory Authority

The new rule is proposed under the authority of Parks and Wildlife Code Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The proposed new rule affects Parks and Wildlife Code, Chapter 61.

§57.985. Largemouth Bass - Special Bag, Possession, and Length Limits.

(a) Upon the effective date of this section, the provisions of §57.981(d)(1)(C)(iii) of this title (relating to Bag, Possession, and Length Limits) cease effect and are replaced with the provisions of subsection (b) of this section.

(b) Bag and possession limits for largemouth bass on Lakes Bellwood (Smith County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purtis Creek State Park (Henderson and Van Zandt counties), and Raven (Walker):

(1) Daily bag limit: 5.

(2) Maximum length limit: It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

(c) The provisions of this section cease effect on August 31, 2022.

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

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James Murphy
General Counsel
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SUBCHAPTER O. COASTAL MANAGEMENT AREAS

31 TAC §57.1011, §57.1012

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §57.1011 and §57.1012, concerning Coastal Management Areas. The proposed amendments would comport department rules governing the possession and display of handguns on coastal management areas (CMAs) operated by the department with the provisions of legislation enacted in the most recent general session of the Texas Legislature. Under the provisions of House Bill 1927 (Regular Session, 2021), a person 21 years of age or older who is not otherwise prohibited by state or federal law from possessing a firearm may carry a handgun in a holster without a permit in any location where such possession is not expressly prohibited. Under the provisions of H.B. 1927, the Texas Parks and Wildlife Commission does not have the authority to establish regulations to modify or prohibit the effect of the legislation.

The proposed amendment to §57.1011, concerning Definitions, would add a reference to the Penal Code definition of firearms for clarity.

The proposed amendment to §57.1012, concerning Rules of Conduct, would create an exception to the current rule regarding display of handguns to allow persons to possess a handgun in compliance with applicable law, including, but not limited to, applicable regulations adopted pursuant to Government Code, Chapter 411, Subchapter H and Penal Code, Chapter 46.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be compliance with the statutory directives of the legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the proposed rules regulate conduct of visitors to coastal management areas, there will be no direct effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Chief Wes Masur, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8001; email: wes.masur@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, §81.006, which allows the department to authorize access to wildlife management areas (which includes coastal management areas) and §81.405, which provides the commission with authority to adopt rules governing recreational activities in wildlife management areas, including coastal management areas.

The proposed amendments affect Parks and Wildlife Code, Chapter 81.

§57.1011. Definitions.

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

(1) (No change.)

(2) Arms and firearms--Any device from which shot, a projectile, arrow, or bolt is fired by the force of an explosion, compressed air, gas, or mechanical device, including, but not limited to, any device described by Penal Code, §46.01(3), rifle, shotgun, handgun, air rifle, pellet gun, longbow, cross bow, sling shot, blow gun, or dart gun.

(3) - (7) (No change.)

§57.1012. Rules of Conduct.

(a) - (d) (No change.)

(e) Arms and Firearms. It is an offense for any person to display or discharge an arm or firearm, except while:

(1) [~~while~~] hunting migratory game birds under the provisions of this subchapter[~~; or~~]

(2) [~~while~~] fishing by means of lawful archery equipment; or

(3) the person is licensed to possess and carry a handgun under Government Code, Chapter 411, Subchapter H, and is in possession of and carrying the handgun in compliance with applicable law, including, but not limited to, applicable regulations adopted pursuant to Government Code, Chapter 411, Subchapter H; or

(4) the person carries a handgun in a holster in compliance with Penal Code, Chapter 46.

(f) - (o) (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.

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James Murphy
General Counsel
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CHAPTER 59. PARKS

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.3

The Texas Parks and Wildlife Department proposes an amendment to 31 TAC §59.3, concerning Park Entry Passes. The proposed amendment would alter entry fees for persons accompanying the holder of a state parklands passport ("passport") and restructure the section for purposes of clarity.

Under Parks and Wildlife Code, §13.018, the department is required to issue a passport to qualified individuals, which are defined by statute as Texas residents 65 years old or over; members of the United States armed forces on active duty who are 65 years old or over; veterans of the armed services of the United States who, as a result of military service, have a service-connected disability consisting of either the loss of the use of a lower extremity or a 60 percent disability rating and who are receiving compensation from the United States because of the disability; and individuals who have a physical or mental impairment that substantially limits one or more major life activities.

Under current rule, persons accompanying the holder of any category of passport are entitled to an entry fee reduction of 50 percent. The department has determined that waiving the entry fees for persons accompanying all categories of passport holders other than those who have obtained their passport after September 1, 1995, would greatly enhance the visitation experience for passport holders and encourage greater participation in beneficial parks experiences by persons who qualify for the passport but perhaps have not contemplated visitation. For ease of reference and the sake of clarity, the proposed amendment also would create separate provisions for categories of passport holders/accompanying persons entitled to free entry and passport holders/accompanying persons entitled to a 50 percent reduction in entry fees.

David Kurtenbach, Director of State Parks Business Management, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to the department as a result of administering the rule. The department estimates, based on historic data, that if adopted, the rule will result in a revenue decrease of approximately $102,000 per year to the department. There will be no fiscal implications to other units of state or local government.

There will be no effect on persons required to comply with the rule as proposed, as the rule does not mandate compliance by any person.

Mr. Kurtenbach also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the increased and more inclusive opportunity for outdoor recreation by the public.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the proposed rule affects only certain visitors to state parks, there will be no direct

effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of a fee (by modifying the current 50 percent fee reduction for certain categories of passport holders); not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to David Kurtenbach, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560; email: david.kurtenbach@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendment is proposed under Parks and Wildlife Code, §13.018, which requires the commission to establish by rule the eligibility requirements and privileges available to the holder of a state parklands passport.

The proposed amendment affects Parks and Wildlife Code, Chapter 13.

§59.3. Park Entry Passes.

Parks entry passes authorize entry privileges to parks where entry fees apply but are not valid for activity or other applicable fees.

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

(3) State Parklands Passport. A state parklands passport shall be issued at no cost to any person meeting the criteria established by Parks and Wildlife Code, §13.018. For the purposes of this paragraph, "accompanying" means entering a park simultaneously with the passport holder.

(A) A state parklands passport issued to a person in a category listed in this subparagraph authorizes the entry of the person to any state park without payment of an individual entrance fee, and includes the waiver of the entry fee for one person accompanying and providing assistance to the passport holder:

(i) a person whose birth date is before September 1, 1930;

(ii) a veteran of the armed services of the United States who, as a result of military service, has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a 60 percent disability rating and who is receiving compensation from the United States because of the disability; and

(iii) a holder of a state parklands passport issued on or before August 31, 1995. [~~Except as otherwise provided in this subsection, a state parklands passport authorizes the entry of the person to whom it was issued to any state park without payment of an individual entrance fee, and includes a discounted individual entry fee of 50% for one person accompanying and providing assistance to the passport holder. For the purposes of this paragraph, "accompanying" means entering a park simultaneously with the passport holder.~~]

(B) (No change.)

(C) A state parklands passport issued to a person in a category listed in this subparagraph who does not otherwise qualify under subparagraph (A) of this paragraph authorizes the entry of the person to any state park upon payment of 50% of the posted entrance fee for the park, rounded to the nearest higher whole dollar, which shall also apply to one person accompanying and providing assistance to the passport holder.

(i) a Texas resident whose birth date is after August 31, 1930;

(ii) a member of the United States armed forces on active duty who is 65 years old or over; and

(iii) an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of the individual. [~~state parklands passport holder whose date of birth is after August 31, 1930, may enter any state park upon payment of 50% of the posted entrance fee for the park, rounded to the nearest higher whole dollar.~~]

(D) - (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.

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James Murphy
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SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §59.131, §59.134

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §59.131 and §59.134, concerning State Park Operational Rules. The proposed amendments would comport department rules governing the possession and display of handguns by visitors to state parks with the provisions of legislation enacted in the most recent general session of the Texas Legislature. Under the provisions of House Bill 1927 (Regular Session, 2021), a person 21 years of age or older who is not otherwise prohibited by state or federal law from possessing a firearm may carry a handgun in a holster without a permit in any location where such possession is not expressly prohibited.

Under the provisions of H.B. 1927, the Texas Parks and Wildlife Commission does not have the authority to establish regulations to modify or prohibit the effect of the legislation.

The proposed amendment to §59.131, concerning Definitions, would add a reference to applicable provisions of the Penal Code to the definition of "arms and firearms" to accommodate the effect of H.B. 1927.

The proposed amendment to §59.134, regarding Rules of Conduct in State Parks, would alter current rule to the effect of ensuring that department regulations regarding the possession and display of handguns in state parks do not conflict with the provisions of House Bill 1927. Additionally, the proposed amendment would alter current language regarding exceptions to the prohibition of display and use of arms and firearms to clarify that the exceptions exist only during the authorized activities and not at any other time the person is within the park.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be compliance with the statutory directives of the legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the proposed rules regulate conduct of visitors to state parks, there will be no direct effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Chief Wes Masur, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8001; email: wes.masur@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

Statutory Authority

The amendments are proposed under Parks and Wildlife Code, §13.101, which provides the commission with authority to promulgate regulations governing abusive, disruptive, or destructive conduct of persons; the activities of park users including camping, swimming, boating, fishing, or other recreational activities; and conduct which endangers the health or safety of park users or their property.

The proposed amendments affect Parks and Wildlife Code, Chapter 13.

§59.131. Definitions.

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

(1) Arms and firearms--Any device from which shot, a projectile, arrow, or bolt is fired by the force of an explosion, compressed air, gas, or mechanical device. To include, but not limited to, any device described by Penal Code, §46.01(3), rifle, shotgun, handgun, air rifle, pellet gun, longbow, cross bow, sling shot, blow gun, or dart gun.

(2) - (20) (No change.)

§59.134. Rules of Conduct in Parks.

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

(d) Arms and Firearms. It is an offense for any person to display or discharge an arm or firearm in a state park, except while [~~unless~~]:

(1) the person is participating in a public hunting activity within the state park as [~~that has been~~] authorized by [~~written order of the director so long as the person is in compliance with the~~] applicable public hunting rules and regulations;

(2) (No change.)

(3) the person is licensed to possess and carry a handgun under Government Code, Chapter 411, Subchapter H, and is in possession of and [~~and/or~~] carrying the handgun in compliance with applicable law, including, but not limited to, applicable regulations adopted pursuant to Government Code, Chapter 411, Subchapter H; [~~or~~]

(4) the person carries a handgun in a holster in compliance with Penal Code, Chapter 46; or

(5) [~~(4)~~] the person has been authorized to do so by written order of the director.

(e) - (q) (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 December 13, 2021.

TRD-202105029
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE
SUBCHAPTER H. PUBLIC HUNTING PROCLAMATION

31 TAC §§65.199, 65.202, 65.203

The Texas Parks and Wildlife Department proposes amendments to 31 TAC §§65.199, 65.202, and 65.203, concerning the Public Hunting Proclamation. The proposed amendments would comport department rules governing the possession and display of handguns on wildlife management areas operated by the department with the provisions of legislation enacted in the most recent general session of the Texas Legislature. Under the provisions of House Bill 1927 (Regular Session, 2021), a person 21 years of age or older who is not otherwise prohibited by state or federal law from possessing a firearm may carry a handgun in a holster without a permit in any location where such possession is not expressly prohibited. Under the provisions of H.B. 1927, the Texas Parks and Wildlife Commission does not have the authority to establish regulations to modify or prohibit the effect of the legislation.

The proposed amendment to §65.199, concerning General Rules of Conduct, §65.201, concerning Motor Vehicles, and §65.203, concerning Hunter Safety, would create exceptions to current rules regarding possession of firearms to allow persons to possess a handgun in compliance with applicable law, including, but not limited to, Penal Code, Chapter 46 and Government Code, Chapter 11, Subchapter H. The proposed amendment to §65.203 would also make nonsubstantive changes to enhance clarity.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be compliance with the statutory directives of the legislature.

Under provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that because the proposed rules regulate conduct of visitors to public hunting lands, there will be no direct effect on small businesses, micro-businesses, or rural communities. On this basis, the department has a determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not expand an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Chief Wes Masur, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8001; email: wes.masur@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, §81.403, which allows the department to issue permits authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or a wildlife management area and requires the commission to prescribe by rule the conditions for the issuance and use of such permits, and §81.405, which provides the commission with authority to adopt rules governing recreational activities in wildlife management areas.

The proposed amendments affect Parks and Wildlife Code, Chapter 81.

§65.199. General Rules of Conduct.

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

(c) It is unlawful for any person to:

(1) (No change.)

(2) possess a firearm, archery equipment, arrow gun, air gun, or any other device for taking wildlife resources on public hunting lands, except for persons authorized by the department to hunt or conduct research on the area, commissioned law enforcement officers, and department employees in performance of their duties; provided, however, a person may possess a handgun in compliance with applicable law, including, but not limited to, the provisions of Penal Code, Chapter 46, and Government Code, Chapter 411, Subchapter H.

(3) - (19) (No change.)

(d) (No change.)

§65.201. Motor Vehicles.

(a) (No change.)

(b) It is unlawful for any person to:

(1) hunt any wildlife resource from a motor vehicle or[,] motor-driven land conveyance[~~, or possess a loaded firearm, arrow gun, or air gun in or on the vehicle,~~] except as provided for a disabled person; or

(2) possess a loaded firearm, arrow gun, or air gun in or on a motor vehicle or motor-driven land conveyance, except that a person may possess a handgun in accordance with applicable law, including, but not limited to, the provisions of Penal Code, Chapter 46, and Government Code, Chapter 411, Subchapter H.

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

§65.203. Hunter Safety.

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

(c) Except as provided in subsection (d) of this section, it [~~It~~] is an offense to:

(1) possess a loaded firearm, arrow gun, or air gun in or on a motor vehicle, except as provided in §65.201(c) of this title (relating to Motor Vehicles) for a disabled person; or[~~.~~]

(2) [~~(d) It is an offense to~~] possess a loaded firearm, arrow gun, or air gun within a designated campsite, vehicle parking area, boat launching facility, or departmental check station.

(d) The provisions of subsection (c) of this section do not apply to a person in possession of a handgun in compliance with applicable law, including, but not limited to, Penal Code, Chapter 46, and Government Code, Chapter 411, Subchapter H.

(e) - (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 December 13, 2021.

TRD-202105026
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 389-4775

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

40 TAC §§93.1 - 93.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of Title 40, Part 1, Chapter 93, of the Texas Administrative Code (TAC), concerning Employee Misconduct Registry. The repeal comprises §§93.1 - 93.9.

BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal 40 TAC Chapter 93. The Employee Misconduct Registry (EMR) rules will be updated and relocated from 40 TAC Chapter 93 to 26 TAC Chapter 561. The relocation of the rules is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Aging and Disability Services (DADS) to HHSC, effective September 1, 2017. The new rules are proposed elsewhere in this issue of the *Texas Register* and are substantially the same as the rules proposed for repeal.

SECTION-BY-SECTION SUMMARY

The proposed repeal of 40 TAC Chapter 93 allows similar rules to be proposed as new in 26 TAC Chapter 561.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed repeal will not create or eliminate a government program;

(2) implementation of the proposed repeal will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to HHSC;

(5) the proposed repeal will not create new rules;

(6) the proposed repeal will repeal existing rules;

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

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

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

Trey Wood has also determined there will be no adverse economic effect on small business, micro-business, or rural communities as they will not be required to alter their current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the proposed repeal because rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the repeal is in effect, the public benefit will be updated rules in 26 TAC Chapter 561, which will provide more clarity and transparency regarding the EMR and the EMR process and a more efficient implementation of statutory authority.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeal as there is no requirement to alter current business practices and the proposed rules do not impose any additional fees costs on those required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposed repeal 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 Laura Gutierrez, Senior Policy Specialist, P.O. Box 149030, Mail Code E-370, Austin, Texas 78714-9030; or by email to HHSCLTCR-Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 19R045" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Health and Safety Code Chapter 253, specifically §253.007, Employee Misconduct Registry, which requires HHSC to establish an employee misconduct registry.

The repeals affect Texas Health and Safety Code Chapter 253.

§93.1. Purpose.

§93.2. Definitions.

§93.3. Employment and Registry Information.

§93.4. Investigations.

§93.5. DADS Investigates: Notice to Employee of Reportable Conduct.

§93.6. DADS Investigates: Informal Review.

§93.7. DADS Investigates: Notice of Opportunity for Administrative Hearing.

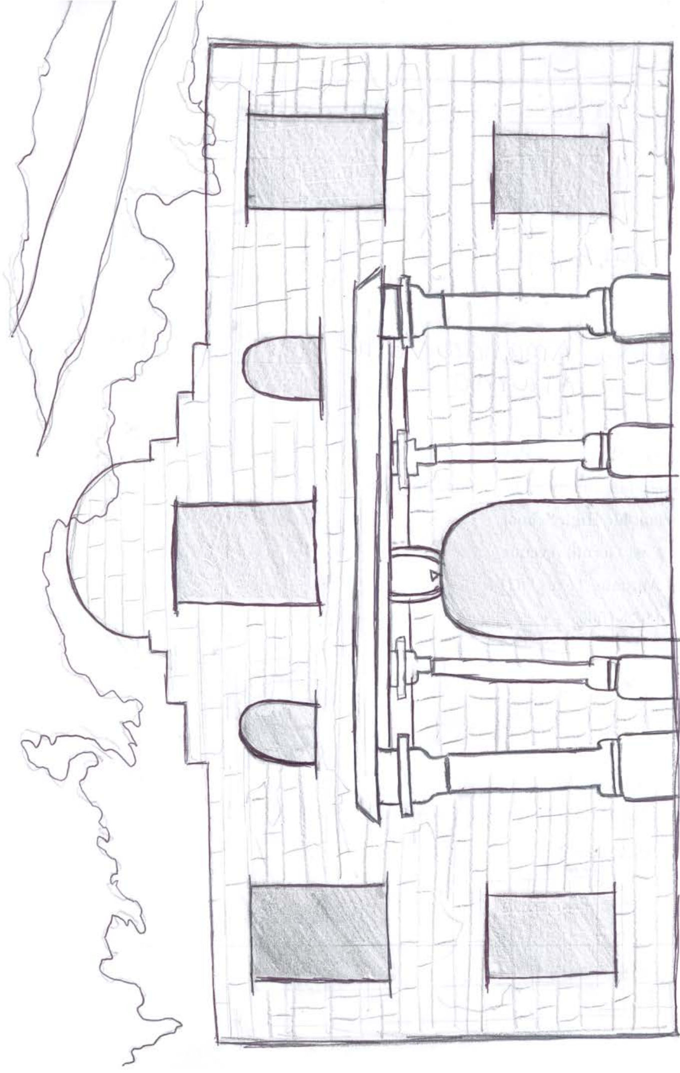
§93.8. Entering Information in the EMR.

§93.9. Removing Information from the EMR.

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 December 6, 2021.

TRD-202104841
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: January 23, 2022
For further information, please call: (512) 438-3161



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.36

The Texas State Board of Pharmacy withdraws the proposed amended §291.36, which appeared in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6343).

Filed with the Office of the Secretary of State on December 9, 2021.

TRD-202104958
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: December 9, 2021
For further information, please call: (512) 305-8010

♦ ♦ ♦

SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.77

The Texas State Board of Pharmacy withdraws the proposed amended §291.77, which appeared in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6344).

Filed with the Office of the Secretary of State on December 9, 2021.

TRD-202104961
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: December 9, 2021
For further information, please call: (512) 305-8010

♦ ♦ ♦

SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.106

The Texas State Board of Pharmacy withdraws the proposed amended §291.106, which appeared in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6347).

Filed with the Office of the Secretary of State on December 9, 2021.

TRD-202104962
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: December 9, 2021
For further information, please call: (512) 305-8010

♦ ♦ ♦

SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

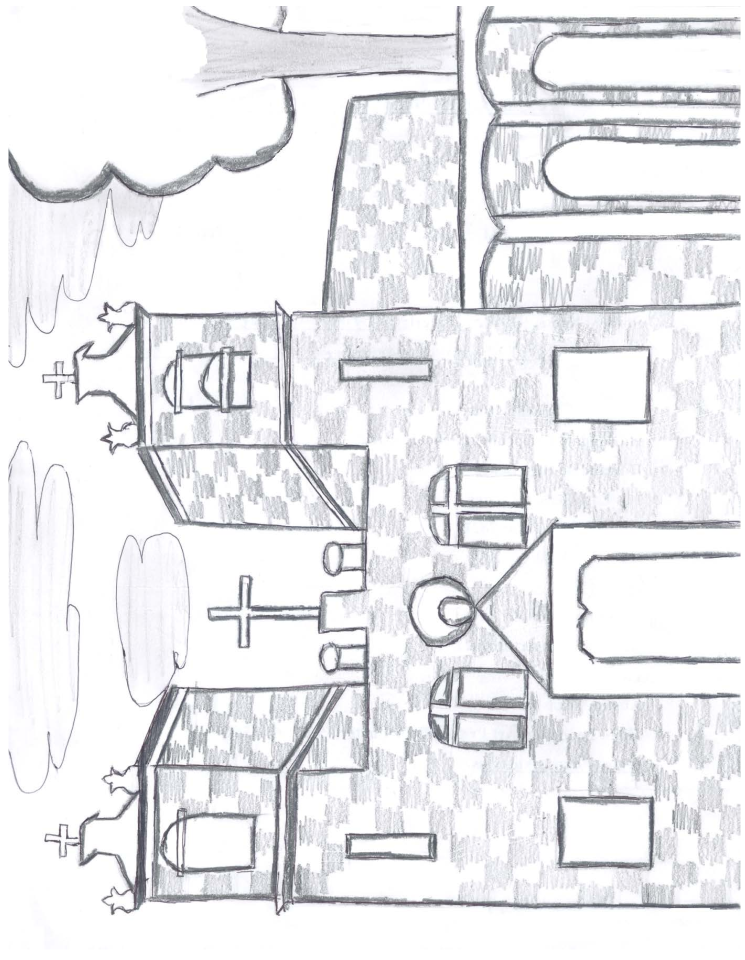
22 TAC §291.131

The Texas State Board of Pharmacy withdraws the proposed amended §291.131, which appeared in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6350).

Filed with the Office of the Secretary of State on December 9, 2021.

TRD-202104963
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Effective date: December 9, 2021
For further information, please call: (512) 305-8010

♦ ♦ ♦



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 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

DIVISION 8. DRUG UTILIZATION REVIEW BOARD

1 TAC §354.1941, §354.1942

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1941, concerning Drug Utilization Review Board, and §354.1942, concerning Conflict of Interest Policy.

The amendment to §354.1942 is adopted with changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4246). This rule will be republished. The amendment to §354.1941 is adopted without changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4246). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to increase transparency in the Texas Drug Utilization Review Board (DUR Board) conflict-of-interest provisions related to financial and other relationships DUR Board members may have with drug manufacturers that have business before the DUR Board. In Texas, the DUR Board makes recommendations about designating drugs as preferred or non-preferred on the Medicaid Preferred Drug List (PDL) and suggestions regarding clinical prior authorization criteria. Drugs with a non-preferred PDL status require prior authorization.

These amendments increase transparency by requiring DUR Board members to disclose financial relationships with drug manufacturers or labelers with products before the DUR Board, minimize the opportunity for pharmaceutical manufacturers or labelers to influence a member of the DUR Board when making recommendations about the PDL, and increase public confidence in DUR Board decisions.

Other amendments ensure DUR Board membership aligns with the Social Security Act §1927(g)(3) and Texas Government Code §531.0736; define terms; and align language with state and federal definitions.

COMMENTS

The 31-day comment period ended August 16, 2021.

During this period, HHSC received comments regarding the proposed rules from the Texas Medical Association. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter stated the definitions of "third party" and "entity" in proposed §354.1942 are unclear and suggested combining the two into a single definition.

Response: HHSC agrees and revised the rule. HHSC combined the definitions of "third party" and "entity" into a single definition for "entity" in adopted §354.1942. HHSC also replaced references in the rule to "third party" throughout §354.1942 with the adopted definition of "entity".

Comment: One commenter stated that adding a definition of "conflict of interest" to §354.1942 that is not identical to the description of conflict of interest in the same rule under §354.1942(b) is confusing and suggested striking the proposed definition of "conflict of interest."

Response: HHSC agrees and revised the rule. HHSC kept the definition of "conflict of interest" in §354.1942 and deleted the description of conflict of interest in §354.1942(b). HHSC added the description of conflict of interest language to the adopted definition of "conflict of interest." HHSC is also adding language under §354.1942(b) to clarify that DUR Board members must avoid conflicts of interest with the member's DUR Board duties.

Comment: One commenter stated the proposed definition in §354.1942 of "entity" would include an "affiliate" and "associate" but does not define these two terms and suggested referring to the Texas Business Organizations Code for these definitions.

Response: HHSC agrees and revised the rule. HHSC added a reference to the Texas Business Organization Code for definitions of "affiliate" and "associate" to the definition of "entity" in §354.1942(a)(4)(B) to provide additional clarity regarding these terms.

HHSC made minor editorial changes to incorporate the proposed family member requirements in §354.1942(b) into the adopted definition of "conflict of interest" in §354.1942(a)(2) to reduce confusion.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(c), which requires the Executive Commissioner to adopt rules for the operation of the Medicaid program. The amendments are specifically authorized by Texas Government Code § 531.0736(i), which requires the Executive Commissioner to adopt rules governing the operation of the DUR Board, and Texas Government Code § 531.0737(b), which au-

thorizes the Executive Commissioner to adopt rules pertaining to conflicts of interest related to the DUR Board.

§354.1942. Conflict of Interest Policy.

(a) Definitions. The following words or phrases have the meaning indicated for purposes of this section:

(1) Board member--A person who is appointed to the DUR Board.

(2) Conflict of interest-- A situation that arises wherein a board member or any family member or relative has a financial relationship with an entity, ownership or financial interest with an entity, or any other interest where the member is in a position to derive a personal benefit from action or decisions made in their professional capacity, with an entity.

(3) DUR Board--Drug Utilization Review Board.

(4) Entity--Includes an individual, a corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity that may have business come before the DUR Board or before the Medicaid Vendor Drug Program. The term includes:

(A) a pharmaceutical manufacturer or labeler with a product on the Texas Drug Code Index and any other entity the Texas Health and Human Services Commission (HHSC) has engaged to assist in developing the preferred drug list or in administering of the DUR Program; and

(B) an "affiliate" or "associate," as defined in Texas Business Organizations Code §1.002, of an entity.

(5) Family member or relative--An individual who is related within the third degree by consanguinity or within the second degree by affinity, as defined by the Government Code, Chapter 573, Subchapter B (concerning Relationships by Consanguinity or by Affinity).

(6) Financial relationship--A written or oral agreement between a board member and an entity that results in the payment of federally reportable income to the board member (i.e., income reported on IRS Form 1099 or Form W-2).

(7) Other interest--Involvement in the affairs of an entity that impairs or may be perceived as impairing a board member's independence of judgment regarding the board member's performance of duties for the DUR Board.

(8) Ownership or financial interest--An equity interest in where a board member exercises control over the selection of investments and any other financial interest whose value cannot be readily determined through reference to public records.

(b) Policy.

(1) A board member must avoid conflicts of interest with the member's DUR Board duties.

(2) To avoid a conflict of interest, a board member must:

(A) disclose any conflict of interest as defined by subsection (a)(2) of this section; and

(B) comply with any action the DUR Board or HHSC may require under subsection (d) of this section to mitigate the effect of any relationship disclosed.

(c) Disclosure.

(1) A board member of or person under consideration for appointment to the DUR Board must report any new or existing financial relationship, ownership or financial interest, or other interest that the board member or their family member or relative, holds or acquires during the board member's tenure on the DUR Board or that was held or acquired during the two-year period that immediately precedes the board member's tenure.

(2) A board member must report any relationships or interests described in paragraph (1) of this subsection within established timeframes to HHSC.

(d) Mitigation. If HHSC determines that a potential conflict of interest exists, the following actions are taken.

(1) HHSC determines whether the potential conflict will impair the board member's exercise of independent judgment.

(2) HHSC informs the board member and the DUR Board chair of its recommended action.

(3) In response to a recommendation from HHSC, the DUR Board may require:

(A) recusal of the board member; or

(B) any other action HHSC determines necessary to avoid or mitigate a potential conflict of interest.

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 December 13, 2021.

TRD-202105037
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 2, 2022
Proposal publication date: July 16, 2021
For further information, please call: (512) 375-0592

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) adopts the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter N, regarding Food and Fibers Research Grant Program Rules. The repeal is adopted without changes to the proposed text as published in the November 5, 2021 issue of the *Texas Register* (46 TexReg 7481) and will not be republished.

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.

The Department received no comments on the proposed repeal.

The repeal is adopted 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.

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 December 9, 2021.

TRD-202104950
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: December 29, 2021
Proposal publication date: November 5, 2021
For further information, please call: (512) 936-9360

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.3

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.3, Sick Leave Pool, without changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7314), and will not be republished. The purpose of the amendment is to incorporate the requirements enacted by HB 2063 (87th Regular Legislative Session) which requires state agencies establish a state employee family leave pool via rule.

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

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

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

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

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

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

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

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

5. The amendment is not creating a new regulation.

6. The amendment does not repeal a rule.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the changed sections would be implementation of HB 2063 and the provision of a clear policy relating to the Department's family leave pool. There will not be economic costs to individuals required to comply with the amended section.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 29, 2021, to November 29, 2021, to receive input on the amendment. No comment was received.

STATUTORY AUTHORITY. The amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on December 13, 2021.

TRD-202105006

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 2, 2022
Proposal publication date: October 29, 2021
For further information, please call: (512) 475-1762

CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative, without changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7315). The rule will not be republished. The purpose of the repeal is to expand the pool of households that may be eligible for a Project Access voucher and facilitating a more rapid exit from an institution into the community.

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

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to minimally expand the pool of households eligible to participate in the Project Access program.

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

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be the expanded pool of households that may be eligible for a Project Access voucher and the acceleration of a household's possible exit from an institution into the community. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 29, 2021, to November 29, 2021, to receive input on the action. No comment was received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended sections affect no other code, article, or statute.

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

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Bobby Wilkinson
Executive Director
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For further information, please call: (512) 475-1762

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §5.801, Project Access Initiative, without changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7316). The rule will not be republished. The purpose of the new rule is to expand the pool of households that may be eligible for a

Project Access voucher and facilitating a more rapid exit from an institution into the community.

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

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

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

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Project Access program.

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

3. The new section does not require additional future legislative appropriations.

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

5. The new section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will not expand, limit, or repeal an existing regulation.

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

8. The new section will not negatively or positively affect the state's economy.

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would expanding the pool of households that may be eligible for a Project Access voucher and facilitating a household's more rapid exit from an institution into the community. There will not be economic costs to individuals required to comply with the new sections.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 29, 2021, to November 29, 2021, to receive input on the action. Comment was received from: (1) North Central Texas Council of Governments, and (2) North Texas Aging and Disability Services.

COMMENT SUMMARY: Both commenters indicated their support for the amendment that allows applicants to be considered for the program if they exit institutions with a Tenant Based Rental Assistance (TBRA) voucher, and for the revision that deems eligible those individuals who exited State Support Living Centers (SSLCs) to group homes. The commenters also both suggested that in future rule revisions TDHCA consider creating an exception for individuals who are on the Project Access wait list and are compelled to exit nursing facilities through an involuntary discharge prior to receiving a Project Access voucher. Commenter 1 noted that currently such individuals generally have no viable housing options other than institutional care in the form of assisted living (i.e., institutional care) or shelters and that they essentially forfeit their best option for independent living.

STAFF RESPONSE: Staff appreciates the comments made in support of the amendments. Staff will consider the comment made regarding those exiting nursing facilities through involuntary discharge in future rule-making as suggested. No changes are made to the rule in response to these comments.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §§20.1 - 20.16

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.16 without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6150). The repeals will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Department's Single Family Programs.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family Programs.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments on the repeal were received.

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §§20.1 - 20.15. Sections 20.1 - 20.8 and §§20.10 - 20.15 are adopted without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6151), and will not be republished. Section 20.9, concerning Inspection Requirements for Construction Activities, is adopted with changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* and will be republished.

The purpose of the new sections is to implement a more germane rule and better align administration to federal and state requirements.

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

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

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

Mr. Bobby Wilkinson, Executive Director, determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family Programs.

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

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand or repeal an existing regulation.

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

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Department's Single Family Programs is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a more germane rule that better aligns administration to federal and state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

SUMMARY OF PUBLIC COMMENTS. The Department accepted public comment between September 17, 2021 and October 18, 2021. Comments regarding the proposed rule received is summarized herein and a reasoned response provided. Comment was received from one commenter listed: Stephanie Hamby, Galilee CDC Executive Director.

§20.9 Inspection Requirements for Construction Activities

Commenter noted concern with requiring the Amy Young Barrier Removal Program (AYBRP) to adhere to the Texas Minimum Construction Standards. They state that most projects use a majority of the available funding for disability-specific accessibility issues, and that this requirement will severely limit the eligibility of many homes where substandard, but non-life threatening, conditions are required to be addressed. In addition commenter felt that §20.9(f)(2)(B), relating to addressing all substandard conditions in the work write-up and cost estimate, would draw funding away from higher-priority accessibility rehabilitations. Commenter stated that previous department approved inspection forms specific to AYBRP were adequate in addressing disability-specific rehabilitation for homeowners.

Staff Response: The updates to the Texas Minimum Construction Standards (TMCS) were designed to provide the benefit of clarity without imposing additional requirements. Staff has carefully reviewed the comment, and agrees with the commenter that removal of the exemption for the Amy Young Barrier Removal Program may inadvertently impose additional requirements, that may cause some eligible households to not be able to be assisted. Staff has incorporated an exception to the requirement for the Amy Young Barrier Removal Program in substantially the same manner in which it appeared in prior iterations of the rule.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

§20.9. Inspection Requirements for Construction Activities.

(a) The inspection requirements in this section are applicable to all construction activities, except for the Amy Young Barrier Removal Program, to the extent funded with Texas HTF.

(b) Interim inspections of construction progress are required for a Draw Request.

(c) Final inspections are required for all single family construction Activities. The inspection must document that the Activity is complete; meets all applicable codes, requirements, zoning ordinances; and has no known deficiencies related to health and safety standards. A copy of the final inspection report must be provided to the Department and to the Household.

(d) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit complies with subsection (c) of this section.

(2) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(e) Reconstruction requirements.

(1) The initial inspection must identify substandard conditions listed in TMCS along with any other health or safety concerns, unless the unit has been condemned or in the case of a HOME and CSHC Activity, the unit to be reconstructed is an MHU.

(A) A copy of the initial inspection report must be provided to the Department and to the Household as applicable. The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) Substandard conditions identified in the initial inspection report must provide adequate detail to evidence the need for reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit complies with subsection (c) of this section.

(3) Applicant must demonstrate compliance with Tex. Gov't Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and applicable Program Rules.

(f) Rehabilitation requirements.

(1) Single Family Housing Units that have been condemned by the Municipality, County, or the State are not eligible for rehabilitation.

(2) The initial inspection must identify all substandard conditions listed in TMCS, along with any other health and safety concerns

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up and cost-estimate.

(3) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected. All deficient items noted on the final inspection report must be corrected prior to approval of the final Draw Request.

(4) Administrator shall meet the applicable requirements of the TMCS. Exceptions to specific provisions of TMCS may be granted in accordance with the TMCS exception request process.

(5) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required if acceptable to the Program as outlined in the Program Rule, or if utilizing a Self-Help Construction Program.

(g) Inspector Requirements.

(1) Inspectors selected by the Administrator to verify compliance with this chapter must be certified by the Administrator to have sufficient professional certifications, relevant education or experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in Single Family Housing Units.

(2) Inspectors shall utilize Department-approved inspection forms, checklists, and standards when conducting inspections.

(h) The Department reserves the right to reject any inspection report if, in its sole and reasonable determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

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

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CHAPTER 21. MINIMUM ENERGY EFFICIENCY REQUIREMENTS FOR SINGLE FAMILY CONSTRUCTION ACTIVITIES

10 TAC §§21.1 - 21.6

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, §§21.1 - 21.6, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6163). The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action. The repealed rules will not be republished.

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

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

1. Mr. Bobby Wilkinson, Executive Director, determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to existing minimum energy efficiency standards for Single Family Programs.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to existing minimum energy efficiency standards for Single Family Programs.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via email; no comments on the repeal were received.

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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10 TAC §§21.1 - 21.6

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, §§21.1 - 21.6 without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6164), and will not be republished. The purpose of the new sections is to implement a more germane rule and provide flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units.

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

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to minimum energy efficiency requirements for the Department's Single Family Programs.

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

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department or a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand or repeal an existing regulation.

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

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under Single Family Programs that are subject to the rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to implement a more germane rule and provide flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units, and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the proposed rule provides flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units, and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Department's Single Family Programs is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a more germane rule that provides flexibility in the event of limited supply of EnergyStar Certified Manufactured Housing Units. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments were received.

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

Except as described herein the proposed new sections affect no other code, article, or statute.

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

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CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12 without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6166). The repeals will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Bootstrap Loan Program.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Texas Bootstrap Loan Program.

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

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

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

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments on the repeal were received.

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6167). The rules will not be republished. The purpose of the new sections is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Bootstrap Loan Program

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

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand or repeal an existing regulation.

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

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 10 rural communities currently participating in the Texas Bootstrap Loan Program that are subject to the rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Texas Bootstrap Loan Program is at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, Executive Director, has also determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via email; no comments were received.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new sections affect no other code, article, or statute.

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

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CHAPTER 25. COLONIA SELF-HELP CENTER PROGRAM RULE

10 TAC §§25.1 - 25.10

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Rule, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6172). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Colonia Self- Help Center Program.

The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

The repeal does not require additional future legislative appropriations.

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

The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing

activity, the administration of the Colonia Self-Help Center Program.

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

The repeal will not negatively or positively affect the state's economy.

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

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

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

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

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

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

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

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10 TAC §§25.1 - 25.10

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 25, Colonia Self-Help Center Rule, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6173), and will not be republished. The purpose of the new sections is to include Nueces County and new public service activities as required by statutory changes to Tex. Gov't Code, Ch. 2306 adopted by the 87th Texas legislature, to implement a more germane rule, and better align administration to federal and state requirements.

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

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

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

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

1. The new rule does not create or eliminate a government program, but it does extend eligibility of an existing program and call for the establishment of a Self-Help Center in Nueces County.

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

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule can be considered to "expand" the existing regulations because the rule requires the establishment of a Colonia Self-Help Center in Nueces County. However, this addition to the rule is necessary to ensure compliance with updates to Tex. Gov't Code, Ch. 2306 adopted by the 87th Texas legislature.

7. The new rule will increase the number of individuals subject to the rule's applicability because the rule requires the establishment of a Colonia Self-Help Center in Nueces County, which adds individuals in that county's service area as possible beneficiaries of assistance that is subject to the regulations.

8. The new rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because the establishment of an additional Colonia Self-Help Center will provide public benefit to residents of the county that were previously unserved by the Program.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 8 rural communities currently participating in construction activities under the Colonia Self-Help Center that are subject to the new rule for which there is no economic impact of the rule during the first year the rule is in effect. Although a new Colonia Self-Help Center is being established which would provide public benefit to additional persons, the total amount of funding available to all Colonia Self-Help Centers is unchanged, and the total number of housing units expected to be constructed is unchanged.

3. The Department has determined that because a public benefit to residents of Nueces County will be made available through the establishment of a Colonia Self-Help Center, there may be a possible positive economic effect on small or micro-businesses or rural communities, although the specific impact is not able to be quantified.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule may provide a possible positive economic effect on local employment because job training is a possible activity and because increased funding limitations for construction activities may create employment opportunities in the construction sector and supportive businesses; however, because the total amount of funding available for the Colonia Self- Help Center Program is not increased, there is no way to determine during rulemaking where the positive effects may occur. The impact is not able to be quantified for any given community.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule"... Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section includes adding Nueces County as required by updates to Tex. Gov't Code, Ch. 2306 adopted by the 87th Texas legislature, implementation of a more germane rule, and better alignment to federal and state requirements There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the Colonia Self-Help Center Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comment received is summarized herein and a reasoned response provided. Comment was received from the two commenters listed: Commenter 1, Robb Stevenson, Executive Director, Equity CDC; and Commenter 2, Cassie Allred, Webb County Program Administrator.

§25.2. Definitions and §25.3 Eligible and Ineligible Activities

Commenter 1 notes the prevalence of Manufactured Home Units (MHU) in colonias, and suggests the Department consider revising 10 TAC 25.2(16) and 25.3(b)(1) to allow rehabilitation activities for MHUs built before 1995, and consider allowing external rehabilitation on older MHUs, specifically for accessibility modifications.

Staff Response: The Colonia Self Help Center rehabilitation program is utilized to address hazardous or unsafe environment for colonia communities. When compared to the cost of replacement, the rehabilitation of an MHU tends to be quite costly when bringing the unit up to current housing standards. Due to these prohibitive costs, staff believes that owners of MHUs can be better served with that amount of assistance by having the unit replaced. Therefore, staff does not concur that MHUs should be eligible for rehabilitation. However, MHUs will remain eligible for replacement. Staff recommends no changes in response to this comment.

§25.8. Colonia Self-Help Center Contract Operation and Implementation

Commenter 2 states that 10 TAC §25.8(k)(2), eligibility requirement related to compliance with Model Subdivision Rules, violates allowable legal exceptions under §232.029 of the Local Government Code. They provide sample documents that demonstrate Webb County's compliance with Local, State, and Federal requirements, and feel that this rule would unfairly disqualify many properties located within Webb County colonias.

Staff Response: The Colonia Self Help Center program does allow for assistance to colonia residents who have multiple residential dwellings on a single property. Under the CDBG Public Service National Objective, these multi dwelling properties can be assisted with surveys and plotting to bring them into compliance with the adopted Model Subdivision Rules. The County advises the Department how the funds will be utilized based on community input and county direction. While the Department understands the vast landscape in which our beneficiaries reside, the Department needs to comply with health and safety requirements. To only assist one household and leave the other residential dwellings unassisted may result in hazardous or unsafe environment for the beneficiaries. Furthermore, the beneficiaries that reside in different dwellings would have to be part of the same household to qualify under this CDBG Low Mod Income National Objective. Staff recommends no change to the rule.

§25.10. Expenditure Thresholds and Closeout Requirements

Commenter 2 suggests that the Department create an avenue for appealing 10 TAC §25.10(a), related to Expenditure Thresholds, for extenuating circumstances that prevent the Administrator from meeting threshold requirements.

Staff Response: All contracts issued by the Department are subject to Chapter 1 Subchapter A (§1.7) which allows for an appeals process. No edits are proposed in response to this comment.

Commenter 2 recommends that the Department, when awarding additional funds to ongoing contracts, provide additional time allowances for expenditure thresholds. They state that additional funds increase the threshold amount but shorten the allotted time.

Staff Response: The Department occasionally makes additional awards through an amendment to existing contracts after the administrator agrees to accept the funds and acknowledges that the funds can be utilized within the four-year contract period. In addition, the Department has authorized an additional 6-month extension for projects initiated, but not yet completed when it can do so under federal expenditure deadlines. Staff recommends no change to the Rules as proposed.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter A General Guidance, §§26.1 - 26.6, and Subchapter B Amy Young Barrier Removal Program, §§26.20 - 26.28, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6181). These rules will not be republished. The repealed rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Housing Trust Fund.

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

3. The repeal does not require additional future legislative appropriations.

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

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration the Texas Housing Trust Fund.

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

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

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 17, 2021, and October 18, 2021. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments on the repeal were received.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §§26.1 - 26.6

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

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

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SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

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

Except as described herein the proposed repealed sections affect no other code, article, or statute.

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

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CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, §§26.1 - 26.7, 26.20 - 26.28, with changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6182). These rules will be republished. The purpose of the new sections is to implement a more germane rule and better align administration to state requirements.

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

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

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

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

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Housing Trust Fund.

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

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand or repeal an existing regulation.

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

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate

or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule" Considering that participation in the programs funded with the Texas Housing Trust Fund is at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

SUMMARY OF PUBLIC COMMENTS. Public comment was received from September 17, 2021, to October 18, 2021. Comment received is summarized herein and a reasoned response provided. Comment was received from the four commenters listed: Commenter 1, Stephanie Hamby, Executive Director, Galillee CDC; Commenter 2, Olivia Figueroa, Executive Director, A.Y.U.D.A Inc.; Commenter 3, Robb Stevenson, Executive Director, Equity CDC; and Commenter 4, Tanya Lavelle, Policy Specialist, Disability Rights Texas.

General Comments

Commenter 4 noted that the Winter Storm Uri highlighted an increased risk of harm to populations that rely on life-sustaining medical equipment, and suggests the Department allow for Amy Young Barrier Removal funds to be used for purchasing and installing generators in applicable households.

Staff Response: The rule as proposed includes a provision allowing for accessibility modifications that vary from the 2010 American Disability Act (ADA) Standards in order to meet the specific accessibility needs of the household, which may include purchase an installation of a generator if such equipment is required due to the specific nature of the disability. Because this is already allowable, no changes were made in response to this comment.

§26.2 Definitions

Commenter 1 noted concern with the removal of qualified inspector requirements in Section 26.1, especially as it relates to a proposed requirement in 10 TAC Chapter 20 to inspect all units for substandard conditions in the Texas Minimum Construction Standards.

Staff Response: The edits to the definition of a qualified inspector are outlined and provide greater discretion to Amy Young Barrier Program Administrators in selection of an inspector. The Administrator is responsible for ensuring inspectors are qualified to inspect proposed projects. Additionally, the proposed requirements related to TMCS for the Amy Young Barrier Removal Program have been struck in 10 TAC Chapter 20 in response to public comment received from the commenter. No changes were made in response to this comment.

§26.21(1) Amy Young Barrier Removal Program Definitions

Commenter 2 suggests that the Department revise §26.21(1) with a higher percent allowance for Administrative Fee Funds, to account for increasing operating costs and the cost of living. Commenter 3 offers 13%-15% of project costs as an example.

Staff Response: In 2019, the Department amended 10 TAC Chapter 26 and increased the per project allowance from $20,000 to $22,500, and as such, the administrative amounts increased. To further increase Administrative Fee Funds to 13%-15% per project, would mean the Project Fund allocation would decrease by 3%-5% resulting in a negative impact to the number of households served. No edits are proposed in response to this comment.

§26.25(c) Amy Young Barrier Removal Program Household Eligibility Requirements

Commenter 3 suggests that as it relates to calculating a household's assets, the Department should consider the use of a passbook rate to discount real property that is not the primary residence in 26.25(c). They state real property is not very liquid, and that taking the net cash value from tax rolls would not accurately account for losses that would likely be incurred if forced to sell quickly.

Staff Response: The rule as proposed increases the limit for liquid assets from $20,000 to $25,000. The Amy Young Barrier Removal Program is a state funded program and not statutory required. Program funds are limited and target the most in need. Households with additional assets, including real property, have an additional resource that others do not. No edits are proposed in response to this comment.

§26.27 Amy Young Barrier Removal Program Construction Requirements

Commenter 1 stated that the changes related to requiring adherence to the Texas Minimum Construction Standards (TMCS) would create costly distractions from the purpose of Amy Young Barrier Removal projects. Commenter 1 stated that requiring use of TMCS will limit the eligibility of many homes by increasing the likelihood of "walk-away" projects.

Staff Response: The updates to the Texas Minimum Construction Standards (TMCS) were designed to provide the benefit of clarity without imposing additional requirements. Staff has carefully reviewed the comment, and agrees with the commenter that the Amy Young Barrier Removal (AYBR) Program should not be required to address substandard conditions that are not directly related to hazards to life, health, and safety. Staff has included an exemption to the requirements of TMCS for the AYBR Pro-

gram within the Single Family Umbrella Rules, and has included a list of items related to life, health, and safety specifically for the AYBR Program as it appeared in the prior iteration of the rule in response to this comment.

SUBCHAPTER A. GENERAL GUIDANCE

10 TAC §§26.1 - 26.7

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department 's legal authority.

§26.1. Purpose.

This chapter clarifies the administration of the Texas Housing Trust Fund (Texas HTF). The Texas HTF provides loans, grants or other comparable forms of assistance to income-eligible individuals, families, and households. The Texas HTF is administered in accordance with Tex. Gov't Code, Chapter 2306, Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule).

§26.2. Definitions.

Definitions may be found in Tex. Gov't Code, Chapter 2306; Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 24 of this title (relating to Texas Bootstrap Loan Program Rule), unless the context or the Notice of Funding Availability (NOFA) indicates otherwise.

§26.3. Allocation of Funds.

(a) The Department administers all Texas HTF funds provided to the Department in accordance with Tex. Gov't Code, Chapter 2306. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to Tex. Gov't Code §2306.202(b), use of the Texas HTF is limited to providing:

(1) Assistance for individuals and families of low and very low income;

(2) Technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;

(3) Security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and

(4) Subject to the limitations in Tex. Gov't Code §2306.251, the Department may also use the fund to acquire property to endow the fund.

(c) Set-Asides. In accordance with Tex. Gov't Code §2306.202(a) and program guidelines:

(1) In each biennium, the first $2.6 million available through the Texas HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit Organizations;

(2) Any additional funds may also be made available to for-profit organizations provided that at least 45% of available funds, as determined on September 1 of each state fiscal year, in excess of the first $2.6 million shall be made available to Nonprofit Organizations; and

(3) The remaining portion shall be distributed to Nonprofit Organizations, for-profit organizations, and other eligible entities, pursuant to Tex. Gov't Code §2306.202.

§26.4. Use of Funds.

(a) Use of additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations, or interest earnings, the Department will redistribute the funds in accordance with the Texas HTF plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the Texas HTF plan in effect at the time.

(c) Use of excess loan repayments and interest earnings. The Texas HTF may be used to respond to unanticipated challenges that may arise in the course of implementing approved single family Program Contracts, activities, or assets that are not readily addressed with federal funds. In the event that Texas HTF loan repayments and interest earnings exceed the requirements under the Texas HTF interest earnings and loan repayments Rider in the General Appropriations Act, up to $250,000 per biennium of these excess Texas HTF loan repayments and interest earnings may be used for this purpose. If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of $250,000 at the start of the biennium. These funds may be used as described in this subsection.

(1) Funds are to be used for internal disposition.

(2) Neither Households nor Program Administrators are eligible to apply for these funds.

(3) Any funds used under this subsection requires authorization of the Executive Director.

(4) Uses for the funds must meet at least one of the following criteria:

(A) For Households previously assisted by the Department with Department funds, for which the Department has confirmed that further work is still required, and for which the original source of funds is no longer able to be used; or

(B) Properties previously owned by Households assisted by the Department, having been foreclosed upon by the Department, and requiring additional carrying costs or improvements to sell the property or transfer the property for an affordable purpose.

§26.5. Prohibited Activities.

(a) Persons receiving or benefiting from Texas HTF funds, as determined by the Department, may not be currently delinquent or in default with child support, government loans, or any other debt owed to the State of Texas.

(b) The activities described in paragraphs (1) - (8) of this subsection are prohibited in relation to the origination of a Texas HTF loan, but may be charged as an allowable cost by a third party lender for the origination of all other loans originated in connection with a Texas HTF loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with Texas HTF funds;

(2) Loan origination fees;

(3) Application fees;

(4) Discount fees;

(5) Underwriter fees;

(6) Loan processing fees;

(7) Loan servicing fees; and

(8) Other fees not approved by the Department in writing prior to expenditure.

§26.6. Administrator Eligibility and Requirements.

Administrator must enter into a written Agreement with the Department in order to be eligible to access the Texas Housing Trust Fund.

§26.7. Conflict of Interest.

In addition to the conflict of interest requirements in Uniform Grants Management Standards (UGMS) or Texas Grants Management Standards (TXGMS) (as applicable to the Contract), no person who is an employee, agent, consultant, officer, trustee, director, member of a governing board or other oversight body, elected official or appointed official of the Administrator who exercises or has exercised any functions or responsibilities with respect to Texas HTF activities under the State Act, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a Texas HTF assisted activity, or have an interest in any Texas HTF Contract, subcontract, or agreement, or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

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 December 13, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 17, 2021
For further information, please call: (512) 475-3721

SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

§26.20. Amy Young Barrier Removal Program Purpose.

The Amy Young Barrier Removal Program (the Program or AYBRP) provides one-time grants in combined Hard and Soft Costs to Persons with Disabilities in a Household qualified as Low-Income. Grant limits per household will be identified in the Notice of Funding Availability (NOFA). Grants are for home modifications that increase accessibility and eliminate substandard conditions.

§26.21. Amy Young Barrier Removal Program Definitions.

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Other definitions are found in Tex. Gov't Code, Chapter 2306, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 20 of this title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this title (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities), and Chapter 26, Subchapter A of this title (relating to Texas Housing Trust Fund Rule).

(1) Administrative Fee--Funds equal to 10% of the Project Costs (combined Hard and Soft Costs) paid to an Administrator upon completion of a project.

(2) Hard Costs--Site-specific costs incurred during construction, including, but not limited to: general requirements, building permits, jobsite toilet rental, dumpster fees, site preparation, demolition, construction materials, labor, installation equipment expenses, etc.

(3) Low-Income--Household income does not exceed the greater of 80% of the Area Median Family Income or 80% of the State Median Family Income, adjusted for Household size, in accordance with the current HOME Investment Partnerships Program income limits, as defined by HUD.

(4) Project Costs--Program funds (combined Hard and Soft Costs) that directly assist a Household.

(5) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(6) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs, per §20.3 of this title (relating to Definitions).

§26.22. Amy Young Barrier Removal Program Geographic Dispersion.

(a) The process to promote geographic dispersion of program funds is as described in this subsection:

(1) For a published period not less than 30 days and in accordance with the NOFA, each state region will be allocated funding amounts for its rural and urban subregions. During this initial period, these funds may be reserved only for Households located in these rural and urban subregions;

(2) After the initial release of funds under paragraph (1) of this subsection, each state region will combine any remaining funds from its rural and urban subregions into one regional balance for a second published period not to exceed 90 calendar days. During this second period, these funds may be reserved only for Households located in that state region; and

(3) After no more than 180 calendar days following the initial release date, any funds remaining across all state regions will collapse into one statewide pool. For as long as funds are available, these funds may be reserved for any Households anywhere in the state on a first-come, first-served basis.

(b) If any additional funds beyond the original program allocations that derive from Texas HTF loan repayments, interest earnings, deobligations, and/or other Texas HTF funds in excess of those funds required under Rider 8 or the Department's appropriation made under the General Appropriations Act may be reprogrammed at the discretion of the Department.

§26.23. Amy Young Barrier Removal Program Administrative Requirements.

(a) To participate in the Program, an eligible participant must first be approved as an Administrator by the Department through the submission of a Reservation System Access Application. Eligible participants include, but are not limited to: Colonia Self-Help Centers established under Tex. Gov't Code, Chapter 2306, Subchapter Z; Councils of Government; Units of Local Government; Nonprofit Organizations; Local Mental Health Authorities; and Public Housing Authorities. An eligible participant may be further limited by NOFA.

(b) The Applicant must enter into an RSP Agreement with the Department in order to be eligible to reserve funds for the Amy Young Barrier Removal Program.

(1) A Nonprofit Organization must submit a current letter of determination from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective throughout the term of the RSP Agreement to access the Reservation System.

(2) A private Nonprofit Organization must be registered and in good standing with the Office of the Secretary of State and the State Comptroller's Office to do business in the State of Texas.

(3) The Applicant must demonstrate at least two years of capacity and experience in housing rehabilitation in Texas. The Applicant will be required to provide a summary of experience that must describe the capacity of key staff members and their skills and experience in client intake, records management, and managing housing rehabilitation. It must also describe organizational knowledge and experience in serving Persons with Disabilities.

(4) The Applicant must provide evidence of adherence to applicable financial accountability standards, demonstrated by an audited financial statement by a Certified Public Accountant for the most recent fiscal year. For a Nonprofit Organizations that does not yet have audited financial statements, the Department may accept a resolution from the Board of Directors that is signed and dated within the six months preceding the Application and that certifies that the procedures used by the organization conform to the requirements in 10 TAC §1.402, (relating to Cost Principles and Administrative Requirements).

(5) An Applicant must submit a current roster of all Board Members, Council Members, Commissioners, or other Members of its legal governing body, including names and mailing addresses.

(6) The Applicant must submit a resolution from the Applicant's direct governing body that authorizes the submission of the Application and is signed and dated within the six months preceding the date of application submission. The resolution must include the name and title of the individual authorized to execute an RSP Agreement.

(7) The Applicant's history will be evaluated in accordance with 10 TAC Chapter 1, Subchapter A, §1.302 and §1.303, (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and Executive Award and Review Advisory Committee (EARAC), respectively). Access to funds may be subject to terms and conditions.

(8) If applicable, the Applicant must submit copies of executed contracts with consultants or other organizations that are assisting in the implementation of the applicant's AYBR Program activities. The Applicant must provide a summary of the consultant or other organization's experience in housing rehabilitation and/or serving Persons with Disabilities.

(c) Administrators must follow the processes and procedures as required by the Department through its governing statute (Chapter 2306 of the Government Code), Administrative Rules (Texas Administrative Code, Title 10, Part 1), Reservation Agreement, Program Manual, forms, and NOFA.

§26.24. Amy Young Barrier Removal Program Reservation System Requirements.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed the lesser of 36 months, or the term limitation defined in the NOFA. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this chapter in effect as of the date of submission by the Administrator.

(b) Limit on Number of Reservations. The limitation on the number of Reservations will be established in the NOFA.

(c) Administrator must remain in good standing with the Department and the state of Texas. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

(d) Reservations will be processed in the order submitted on the Reservation System. Submission of a Reservation consisting of support documentation on behalf of a Household does not guarantee funding.

(e) Reservations may be submitted in stages, and shall be processed through each stage as outlined in the Program Manual.

(f) Administrator must submit a substantially complete request for each stage of the Reservation as outlined in the Program Manual. Administrators must upload all required information and verification documentation in the Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 calendar days beginning at the start of the first day following the date the Administrator is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests shall not constitute a Reservation of Funds.

(g) If a Household is determined to be eligible for assistance from the Department, the Department will reserve up to the maximum award amount permitted under the NOFA in Project Costs and an Administrative Fee equal to 10% of the combined Hard and Soft costs in the Contract System on behalf of the Household, funding permitting.

§26.25. Amy Young Barrier Removal Program Household Eligibility Requirements.

(a) At least one Household member shall meet the definition of Persons with Disabilities.

(b) The assisted Household must be qualified as Low-Income.

(c) The assisted Household's liquid assets shall not exceed $25,000. Liquid assets are considered to be cash deposited in checking or savings accounts, money markets, certificates of deposit, mutual funds, or brokerage accounts; the net value of stocks or bonds that may be easily converted to cash; and the net cash value calculated utilizing the appraisal district's market value for any real property that is not a principal residence. Funds in tax deferred accounts for retirement or education savings (e.g., Individual Retirement Accounts, 401(k)s, 529 plans) and whole life insurance policies are excluded from the liquid assets calculation.

(d) The Household may be ineligible for the program if there is debt owed to the State of Texas, including a tax delinquency; a child

support delinquency; a student loan default; or any other delinquent debt owed to the State of Texas.

§26.26. Amy Young Barrier Removal Program Property Eligibility Requirements.

(a) Owner-occupied homes are eligible for Program assistance. In owner-occupied homes, the owner of record must reside in the home as their permanent residence unless otherwise approved by the Department. If the property is family-owned and the owner of record is deceased or not a Household member, the Department may deem the property renter-occupied unless satisfactory documentation is provided to the Department that confirms otherwise.

(b) Certain rental units are eligible for Program assistance and must meet the following requirements:

(1) In rental units, all Household occupants, including the Person with Disability, must be named on the Program intake application and household income certification.

(2) The owner of record for the property shall provide a statement allowing accessibility modifications to be made to the property.

(c) The following rental properties are ineligible for Program assistance:

(1) Property that is or has been developed, owned, or managed by that Administrator or an Affiliate;

(2) Rental units in properties that are financed with any federal funds or that are subject to 10 TAC Chapter 1, Subchapter B, §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973);

(3) Rental units that have substandard and unsafe conditions identified in the initial inspection. Program funds may not be used to correct substandard or unsafe conditions in rental units, but may be used for accessibility modifications only after the substandard and unsafe conditions have been corrected at the property owner's expense; or

(4) Rental units owned by a property owner who is delinquent on property taxes associated with the property occupied by the Household.

§26.27. Amy Young Barrier Removal Program Construction Requirements.

(a) Inspections.

(1) Initial inspection arranged by the Administrator is required and must identify the accessibility modifications needed by the Person with Disability; assess and document the condition of the property; and identify all deficiencies that constitute life-threatening hazards and unsafe conditions.

(2) Final inspection arranged by the Administrator is required and must verify, assess, and document that all construction activities have been repaired, replaced, and/or installed in a professional manner consistent with all applicable building codes and Program requirements, and as required in the Work Write-Up as described in subsection (e) of this section.

(b) A Manufactured Housing Unit may be eligible for Program assistance if it was constructed on or after January 1, 1995. The Department may allow Manufactured Housing Units older than January 1, 1995, to receive only exterior accessibility modifications (i.e., ramps, handrails, concrete flatwork) as long as the Administrator can verify that the unit itself will be free of hazardous and unsafe conditions.

(c) Construction standards.

(1) Administrator must follow all applicable sections of local building codes and ordinances, pursuant to Section 214.212 of the Local Government Code. Where local codes do not exist, the 2015 International Residential Code (IRC), including Appendix J for Existing Buildings and Structures, is the applicable code for the Program.

(2) Accessibility modifications shall be made with consideration to 2010 American Disability Act (ADA) Standards, but may vary from the ADA Standards in order to meet specific accessibility needs of the household as requested and agreed to by the assisted household.

(3) Administrators must adhere to Chapter 21 of this title, (relating to Minimum Energy Efficiency Requirements for Single Family Construction Activities).

(4) Administrators and subcontractors must honor a twelve-month warranty on all completed items in their scope of work.

(d) Life-threatening hazards and unsafe conditions.

(1) Administrators may make repairs to eliminate life-threatening hazards and correct unsafe conditions in the Single-Family Housing as long as no more than 25% of the Project Hard Costs budget is utilized for this purpose, unless otherwise approved by the Department.

(2) Life-threatening hazards and unsafe conditions include, but are not limited to: faulty or damaged electrical systems; faulty or damaged gas-fueled systems; faulty, damaged or absent heating and cooling systems; faulty or damaged plumbing systems, including sanitary sewer systems; faulty, damaged or absent smoke, fire and carbon monoxide detection/alarm systems; structural systems on the verge of collapse or failure; environmental hazards such as mold, lead-based paint, asbestos or radon; serious pest infestation; absence of adequate emergency escape and rescue openings and fire egress; and the absence of ground fault circuit interrupters (GFCI) and arc fault circuit interrupters (AFCI) in applicable locations.

(3) If the work write-up addresses any of the following line items, the percentage of Project Hard Costs devoted to eliminating substandard, unsafe conditions may only exceed 25% by the amount of the following line item's cost: emergency escape, rescue openings and fire egress; ground fault circuit interrupters (GFCI); arc fault circuit interrupters (AFCI); and smoke, fire, and carbon monoxide detection/alarm systems. The combination of these line items plus the correction of any other unsafe conditions cannot exceed 40% of Project Hard Costs budget.

(4) All areas and components of the Single-Family Housing Unit must be free of life-threatening hazards and unsafe conditions at project completion.

(e) Work-Write Ups. The Department shall review work-write ups (also referred to as "scope of work") and cost estimates prior to the Administrator soliciting bids.

(f) Bids. The Department shall review all line item bids Administrator selects for award prior to the commencement of construction. Lump sum bids will not be accepted.

(g) Change orders. An Administrator seeking a change order must obtain written Department approval prior to the commencement of any work related to the proposed change. Failure to get prior Departmental approval may result in disallowed costs.

§26.28. Amy Young Barrier Removal Program Project Completion Requirements.

(a) The Administrator has 90 calendar days from the date the Department approves the line item contract bid the Administrator se-

lected for award to complete all construction activities and submit the Project and Administrative Draw Request, with required supporting documentation, in the Housing Contract System for reimbursement by the Department. The Department may grant a one-time, 30-calendar day extension to the Project completion deadline. The Department may grant additional extensions due to extenuating circumstances that are beyond the Administrator's control.

(b) The Administrator must submit evidence with the final Draw that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(c) The Administrator must provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(d) The Department will reimburse the Administrator in one, single payment after the Administrator's successful submission of the Project and Administrative Draw Request per Department instructions. Interim Draws may not be permitted. The Department reserves the right to delay Draw approval in the event that the Household expresses dissatisfaction with the work completed in order to resolve any outstanding conflicts between the Household and the Administrator and its subcontractors.

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 December 13, 2021.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3721

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

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

16 TAC §60.24

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.24, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6466). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute for the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department.

Texas Government Code, Chapter 2110 addresses state agency advisory committees. In accordance with Texas Government Code §2110.008, Duration of Advisory Committees, the Commission has adopted 16 TAC §60.24, which lists the agency's advisory boards and committees (advisory boards) and establishes the abolishment date of each of these advisory boards.

The adopted rule updates the list of the Department's advisory boards and their abolishment dates, as applicable. The adopted rule reflects the separate statutory changes that have been made to the Department's program statutes to add programs, to deregulate programs, or to add or repeal advisory boards for certain programs. The adopted rule is necessary to ensure that the rule reflects the current advisory boards and their abolishment dates, if applicable, as required under Texas Government Code §2110.008.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §60.24, Advisory Boards. The adopted rule amends subsection (c) to update the list of the Department's advisory boards. The adopted rule adds advisory boards to subsection (c) with an abolishment date of September 1, 2024, to align with the other advisory boards in the list. The adopted rule also removes advisory boards from the list to reflect the programs that have been deregulated or the advisory boards that have been repealed through separate statutory changes. A few clean-up changes also have been made to this subsection.

The adopted rule adds new subsection (d). A separate list is created for those advisory boards that are specifically exempt from Texas Government Code, Chapter 2110 and do not have a designated abolishment date. The exempt advisory boards have been listed to avoid confusion and to account for the Department's advisory boards.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6466). The deadline for public comments was November 1, 2021. The Department received comments from one interested party on the proposed rule during the 30-day public comment period. The public comment is summarized below.

Comment--One commenter asked why the Department was getting rid of the barber and cosmetology advisory boards since they play such an important role at TDLR. The commenter stated that these two advisory boards are necessary and expressed concerns that they would be eliminated first in comparison to a few of the other advisory boards.

Department Response--The Department disagrees with the comment. HB 1560, 87th Legislature, Regular Session (2021), the Sunset legislation for the Commission and the Department, combined the Barbering and Cosmetology programs, created a new advisory board for both barbering and cosmetology, and abolished the separate advisory boards (Article 3). The

proposed rule reflects these statutory changes by adding the new Barbering and Cosmetology Advisory Board to the list of boards under subsection (c) and removing the separate Advisory Boards on Barbering and Cosmetology from the list. The Department did not make any changes to the proposed rule as a result of the comment.

COMMISSION ACTION

At its meeting on December 7, 2021, the Commission adopted the proposed rule as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The adopted rule also is adopted under Texas Government Code, Chapter 2110, §2110.008, regarding the duration of advisory committees.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 2110. In addition, the following statutes for the programs that have advisory boards are affected by the adopted rule: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapter 1001 (Driver and Traffic Safety Education); Government Code, Chapter 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1302 (Air Conditioning and Refrigeration Contractors); 1305 (Electricians); 1601 (Barbers); 1602 (Cosmetologists); 1603 (Barbers and Cosmetologists); 1703 (Polygraph Examiners); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers): 1952 (Code Enforcement Officers); 1953 (Sanitarians); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); and 2310 (Motor Fuel Metering and Quality); and Transportation Code, Chapter 662 (Motorcycle Operator Training and Safety).

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.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

CHAPTER 82. BARBERS

16 TAC §82.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 82, §82.80, regarding the Barbering program, without changes to the proposed text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6652). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 82 implement Texas Occupations Code, Chapters 1601 and 1603.

The adopted rule is necessary to begin implementing House Bill (HB) 1560, 87th Legislature, Regular Session (2021). HB 1560 makes many changes, including combining the Barbering and Cosmetology program statutes, and eliminating instructor licenses. Under HB 1560, TDLR will discontinue issuing instructor licenses at some point before September 1, 2023, and instructors will transition to holding only the individual practitioner license for their field of instruction. In preparation for that transition, the adopted rule reduces instructor license renewal fees to match the renewal fees for the Class A Barber certificate and specialty licenses or certificates.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §82.80 by reducing the instructor license renewal fee to $55 and reducing the specialty instructor license renewal fee to $30.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6652). The deadline for public comments was November 8, 2021. The Department received comments from three interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: The Department received two comments opposing the discontinuation of instructor licenses.

Department Response: The Department disagrees with the comments. The proposed rule does not deregulate instructor licenses; instead, the proposed rule alters applicable fees for renewal. HB 1560 requires the Department to discontinue issuing barbering instructor licenses by September 1, 2023. The Department does not have authority to change this legislative direction in rule, and comments requesting such a change are outside the scope of the proposed rule. The Department made no changes to the proposed rule in response to these comments.

Comment: The Department received one comment opposing combining cosmetology and barbering into one regulatory program.

Department Response: This comment is outside the scope of the proposed rule. The Department made no changes to the proposed rule in response to these comments.

COMMISSION ACTION

At its meeting on December 7, 2021, the Commission adopted the proposed rule as recommended by the Department.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. 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.

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Brad Bowman
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CHAPTER 83. COSMETOLOGISTS

16 TAC §83.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.80, regarding the Cosmetologists Program, without changes to the proposed text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6653). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 83 implement Texas Occupations Code, Chapters 1602 and 1603.

The adopted rule is necessary to begin implementing House Bill (HB) 1560, 87th Legislature, Regular Session (2021). HB 1560 makes many changes, including combining the Barbers and Cosmetologists program statutes, eliminating instructor licenses, and deregulating wig specialty certificates and wig salons. Under HB 1560, TDLR will discontinue issuing instructor licenses at some point before September 1, 2023, and instructors will transition to holding only the individual practitioner license for their field of instruction. In preparation for that transition, the adopted rule reduces instructor license renewal fees to match the renewal fees for the cosmetology operator and specialty licenses.

Additionally, the adopted rule implements HB 1560 by removing wig specialty certificates from the list of initial application fees and renewal fees.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §83.80 by removing wig specialty certificates from the list of initial application fees and renewal fees; reducing the instructor license renewal fee to $50; and reducing the instructor specialty license renewal fee to $50.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6653). The deadline for public comments was November 8, 2021. The Department received comments from nine interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment -- The Department received seven comments opposing the discontinuation of instructor licenses.

Department Response -- The Department disagrees with the comments. The proposed rule does not deregulate instructor licenses; instead, the proposed rule alters applicable fees for renewal. HB 1560 requires the Department to discontinue issuing cosmetology instructor licenses by September 1, 2023. The Department does not have authority to change this legislative direction in rule, and comments requesting such a change are outside the scope of the proposed rule. The Department made no changes to the proposed rule in response to these comments.

Comment -- Champion Beauty College submitted a comment expressing interest in the advisory board and stating that barbering and cosmetology should not be deregulated.

Department Response -- This comment is outside the scope of the proposed rule. The Department made no changes to the proposed rule in response to this comment.

Comment -- One commenter submitted a comment seeking assistance with a licensing matter.

Department Response -- This comment is outside the scope of the proposed rule. The Department made no changes to the proposed rule in response to this comment.

COMMISSION ACTION

At its meeting on December 7, 2021, the Commission adopted the proposed rule as recommended by the Department.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Departments governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. 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.

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CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §111.2; Subchapter E, §111.41; Subchapter F, §111.50 and §111.51; Subchapter J, §111.91 and §111.92; and Subchapter V, §111.210 and §111.211; adopts a new rule at Subchapter V, §111.212; and adopts the repeal of existing rules at Subchapter V, §§111.212 - 111.216, and Subchapter X, §§111.230 - 111.232, regarding the Speech-Language Pathologists and Audiologists Program, without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5698). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 111 implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; Chapter 51, the enabling statute of the Commission and the Texas Department of Licensing and Regulation (Department); and Chapter 111, Telemedicine and Telehealth.

The adopted rules implement the telehealth emergency rules on a permanent basis; implement SB 40, 87th Legislature, Regular Session (2021); and include changes as a result of the four-year rule review related to telehealth and remote supervision (tele-supervision). The adopted rules also reorganize the current provisions and eliminate duplicative provisions.

Telehealth Emergency Rules

The Commission adopted emergency rules to ensure that services to clients and supervision of certain licensees may continue to be provided through telehealth as was allowed under the waivers that were granted by the Governor during the COVID-19 pandemic. The emergency rules also reflected the change in the statutory authority regarding telehealth. The emergency rules were necessary to protect the public health, safety, and welfare. (Emergency Rules, 46 TexReg 5313, August 27, 2021).

The telehealth emergency rules were effective September 1, 2021. Emergency rules are only effective for 120 days, with one 60-day extension, for a total of 180 days. The adopted rules implement the emergency rules on a permanent basis.

Implementation of SB 40

Senate Bill (SB) 40, 87th Legislature, Regular Session (2021) added new telehealth provisions and rulemaking authority to Texas Occupations Code, Chapter 51, and repealed the provisions regarding joint rules for fitting and dispensing hearing instruments by telepractice in Texas Occupations Code, Chapters 401 and 402. The joint rules were with the Hearing Instrument Fitters and Dispensers program. These changes became effective immediately.

The adopted rules implement SB 40 as it relates to telehealth, tele-supervision, and the repeal of the statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice. Because SB 40 was effective immediately, the necessary changes related to statutory authority for telehealth were included in the emergency rules (discussed above).

Four-Year Rule Review Changes

The adopted rules include changes as a result of the four-year rule review related to telehealth and tele-supervision. The Department conducted the required four-year rule review of the rules under 16 TAC Chapter 111, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021).

In response to the Notice of Intent to Review that was published, the Department received 106 public comments regarding 16 TAC Chapter 111. Most of the comments requested rule changes that would make permanent the expanded use of telehealth and tele-supervision for interns and assistants, as was allowed under the Governor's waivers that were issued pursuant to the COVID-19 disaster declaration. These suggested changes are part of the emergency rules and are part of the adopted rules. The adopted rules also include changes based on the Department's review of the rules during the rule review process related to telehealth and tele-supervision.

Reorganization Changes

The adopted rules consolidate the existing rules, reorganize the existing provisions by subject matter, and eliminate duplicative provisions, as recommended by Department staff.

SECTION-BY-SECTION SUMMARY

Subchapter A

The adopted rules amend Subchapter A. General Provisions.

The adopted rules amend §111.2, Definitions. The adopted rules combine the separate definitions of "direct supervision" for interns and assistants into one definition. The adopted rules combine the separate definitions of "indirect supervision" for interns and assistants into one definition. The adopted rules allow for direct and indirect supervision to be performed through tele-supervision and not require in-person supervision. The definition of "in-person" has been updated to address services to clients and supervision of licensees. The adopted rules add a new definition of "tele-supervision." This terminology replaces language in the current rules regarding supervising through telehealth or telepractice/telehealth.

Subchapter E

The adopted rules amend Subchapter E. Requirements for Intern in Speech-Language Pathology License.

The adopted rules amend §111.41, Intern in Speech-Language Pathology License--Internship and Supervision Requirements. Subsection (d) is amended to allow interns to receive direct supervision through tele-supervision and not require in-person supervision.

Subchapter F

The adopted rules amend Subchapter F. Requirements for Assistant in Speech-Language Pathology License.

The adopted rules amend §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. Subsection (e) is amended to allow supervision to be performed through tele-supervision and not require in-person supervision.

The adopted rules amend §111.51, Assistant in Speech-Language Pathology License--Supervision Requirements. Subsection (e) is amended to allow supervision to be performed through tele-supervision and not require in-person supervision. Subsec-

tion (g) is amended to eliminate any caps or limits on the number of hours that can be supervised through tele-supervision and to allow direct and indirect supervision to be provided through tele-supervision.

Subchapter J

The adopted rules amend Subchapter J. Requirements for Assistant in Audiology License.

The adopted rules amend §111.91, Assistant in Audiology License--Supervision Requirements. Subsection (f) is amended to eliminate restrictions on the duties that can be supervised by tele-supervision and to allow direct and indirect supervision to be provided through tele-supervision.

The adopted rules amend §111.92, Assistant in Audiology License--Practice and Duties of Assistants. Subsection (c) is amended to allow the assigned duties under paragraphs (1) - (3) to be directly supervised through tele-supervision and not require in-person supervision. Paragraph (4) is amended to remove the requirement for direct supervision of this duty.

Subchapter V

The adopted rules amend Subchapter V. Telehealth.

The adopted rules amend §111.210, Definitions Relating to Telehealth. The section has been updated to consolidate definitions from §111.210 and §111.231 into one section and to eliminate duplicative provisions. Other definitions are found in current §111.2.

The adopted rules make clean-up changes to the definition of "client site." The adopted rules remove the definition of "consultant" and the references and provisions in the rules regarding consultants. The definition of "provider" has been expanded to include speech-language pathology interns, speech-language pathology assistants, and audiology assistants. This change will allow additional licensees to provide telehealth services. The definitions of "facilitator" and "provider site" have been updated to reference "provider" and to make clean-up changes. The definition of "telecommunications technology" is updated to include a smart phone, or any audio-visual, real-time, or two-way interactive communication system.

The adopted rules update the definition of "telehealth" to include assessments, interventions, or consultations regarding a client. For audiologists and audiology interns, the definition has been updated to include the use of telecommunications technology for the fitting and dispensing of hearing instruments.

The adopted rules update the definition of "telehealth services" to include the rendering of audiology and/or speech-language pathology services through telehealth to a client who is physically located at a site other than the site where the provider is located. For audiologists and audiology interns, the definition has been updated to include the fitting and dispensing of hearing instruments through telehealth to a client who is physically located at a site other than the site where the provider is located.

The adopted rules remove the definitions of "telepractice" and "telepractice services." These terms are duplicative with the terms "telehealth" and "telehealth services," which is the terminology used in Occupations Code Chapter 51, as amended by SB 40, and Chapter 111.

The adopted rules amend §111.211, Service Delivery Models of Speech-Language Pathologists. The title of the section has been changed to "Service Delivery Models" to apply to all telehealth providers. The adopted rules remove references to "consultant" and replace references to "telepractice" with "telehealth service."

The adopted rules add a new §111.212, Requirements for Providing Telehealth Services and Using Telehealth. This new section consolidates the separate telehealth rules for speech-language pathologists and audiologists into one new rule. The new rule consolidates the provisions from existing rules §§111.212, 111.214, 111.215, and 111.232; reorganizes the provisions by subject matter; eliminates duplicative provisions; and updates the terminology to use the terms "telehealth" and "telehealth services."

New §111.212(a) addresses the applicability of the subchapter. Except where noted, the subchapter applies to speech-language pathologists, speech-language pathology interns, speech-language pathology assistants, audiologists, audiology interns, audiology assistants, and dual speech-language pathologist and audiologist license holders, as authorized under this subchapter. This subsection also addresses the applicability of other laws.

New §111.212(b) addresses licensure and scope of practice requirements related to providing telehealth services. This subsection also specifies that speech-language pathology assistants and audiology assistants may provide services through telehealth, as directed by their supervisors, according to the specified requirements.

New §111.212(c) addresses competence and standard of practice. The subsection includes provisions regarding provider competence in the services being provided and the methodology and equipment being used; the standard of practice being the same for services provided via telehealth as services provided in-person; and the responsibility of a provider to determine whether a particular service or procedure is appropriate to be provided via telehealth.

New §111.212(d) addresses the use of facilitators to assist a provider in providing telehealth services. This subsection includes provisions regarding the facilitator's qualifications, training, and competence, as appropriate; the tasks that may be performed; the responsibilities of the provider; and the required documentation.

New §111.212(e) addresses technology and equipment. This subsection includes provisions regarding using telecommunications technology and other equipment that the provider is competent to use, and only providing telehealth services if the telecommunications technology and equipment are appropriate for the services to be provided; are properly calibrated, if appropriate, and in good working order; and are of sufficient quality to deliver equivalent service and quality to the client as if those services were provided in-person.

New §111.212(f) addresses client contacts and communications. This subsection provides that the initial contact between a provider and a client may be at the same physical location or through telehealth, as determined appropriate by the provider. For a speech-language pathology assistant, the initial contact with a client must be made by the assistant's supervisor. This subsection requires consideration of certain factors in determining the appropriateness of providing services via telehealth and requires a notification of telehealth services be provided to a client.

New §111.212(g) addresses records and billing. This subsection includes provisions regarding maintenance of client records;

documentation of telehealth services; and reimbursement of telehealth services.

New §111.212(h) addresses hearing instruments. This subsection includes a provision regarding digital adjustments of hearing instruments through telecommunications technology by a provider who is an audiologist or an audiology intern.

The adopted rules repeal existing §111.212, Requirements for the Use of Telehealth by Speech-Language Pathologists.

The adopted rules repeal existing §111.213, Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

The adopted rules repeal existing §111.214, Requirements for Providing Telehealth Services in Speech-Language Pathology.

The adopted rules repeal existing §111.215, Requirements for Providing Telepractice Services in Audiology.

The adopted rules repeal existing §111.216, Limitations on the Use Telecommunications Technology by Audiologists.

Subchapter X

The adopted rules repeal Subchapter X. Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice.

The adopted rules repeal existing §111.230, Purpose. The statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice were repealed by SB 40, effective immediately.

The adopted rules repeal existing §111.231, Definitions. The definitions under §111.231 are included in §111.2 and §111.210, as necessary.

The adopted rules repeal existing §111.232, Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments. The provisions in §111.232 have been consolidated with the provisions in existing §§111.212, 111.214, and 111.215 to create new §111.212 under Subchapter V. Telehealth.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5698). The deadline for public comments was October 11, 2021. The Department received comments from three interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment--One individual submitted a comment on §111.51, Assistant in Speech-Language Pathology License--Supervision Requirements. The commenter stated that in light of COVID-19, initial contacts have been "increasingly difficult to allow for timely initiation of care." The commenter suggested allowing the speech-language pathologist supervisor to either conduct a chart review or have an initial contact with the client, to determine if the assistant has the skill set to provide services to a client. The commenter stated that all assistants in Texas have a minimum of a bachelor's degree and have received training.

Department Response--The comment relates to the existing provisions under §111.51(f), which require the supervising speech-language pathologist to have the initial contact with the clients on their caseload before allowing an assistant under their supervision to provide services to those clients. It appears the commenter would like to amend the existing provisions to require the speech-language pathologist supervisor to either conduct a chart review or have the initial contact with the client. This change would allow a chart review to be performed instead of the initial contact with the client.

The Department disagrees with this comment. The suggested change goes beyond the scope of the proposed changes and would be a substantive change to the existing and proposed rules. While other subsections under §111.51 were amended in this rulemaking, §111.51(f) was not amended. A similar provision also was added to new §111.212(f)(1) that reflects the current requirements under §111.51(f). The Department did not make any changes to the proposed rules as a result of this comment.

Comment--One individual submitted a comment in support of the proposed rules that allow interns and assistants to use telehealth and that remove the limits on the amount of supervision can be provided through telehealth. The commenter stated that there had been no increase in complaints over the last 18 months and expressed appreciation for keeping the rules updated.

Department Response--The Department appreciates this comment in support of the proposed rules. The Department did not make any changes to the proposed rules as a result of this comment.

Comment--The Texas Speech-Language Hearing Association (TSHA) submitted a comment in support of the proposed rules under Chapter 111, Subchapters A, E, F, J, and V. TSHA stated it supports all the proposed rule changes, which will allow for increased access to services, increased coverage of rural areas, and increased flexibility to provide services safely during the pandemic.

Department Response--The Department appreciates this comment in support of the proposed rules. The Department did not make any changes to the proposed rules as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Speech-Language Pathologists and Audiologists Advisory Board met on November 2, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on December 7, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §111.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.41

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.50, §111.51

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE

16 TAC §111.91, §111.92

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER V. TELEHEALTH

16 TAC §§111.210 - 111.212

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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For further information, please call: (512) 475-4879

SUBCHAPTER V. TELEHEALTH

16 TAC §§111.212 - 111.216

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeals are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted repeals.

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

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SUBCHAPTER X. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §§111.230 - 111.232

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeals are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted repeals.

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CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter A, §112.2; adopts new rules at Subchapter N, §112.130 and §112.132; and adopts the repeal of an existing rule at Subchapter P, §112.150,

regarding the Hearing Instrument Fitters and Dispensers Program, without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5713). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 112 implement Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; Chapter 51, the enabling statute of the Commission and the Texas Department of Licensing and Regulation (Department); and Chapter 111, Telemedicine and Telehealth.

The adopted rules implement the telehealth emergency rules on a permanent basis; implement SB 40, 87th Legislature, Regular Session (2021); and include changes as a result of the four-year rule review related to telehealth. The adopted rules also reorganize the existing provisions.

Telehealth Emergency Rules

The Commission adopted emergency rules to ensure that services to clients may continue to be provided through telehealth as was allowed under the waivers that were granted by the Governor during the COVID-19 pandemic. The emergency rules also reflected the change in the statutory authority regarding telehealth. The emergency rules were necessary to protect the public health, safety, and welfare. (Emergency Rules, 46 TexReg 5327, August 27, 2021).

The telehealth emergency rules were effective September 1, 2021. Emergency rules are only effective for 120 days, with one 60-day extension, for a total of 180 days. The adopted rules implement the emergency rules on a permanent basis.

Implementation of SB 40

Senate Bill (SB) 40, 87th Legislature, Regular Session (2021) added new telehealth provisions and rulemaking authority to Texas Occupations Code, Chapter 51, and repealed the provisions regarding joint rules for fitting and dispensing hearing instruments by telepractice in Texas Occupations Code, Chapters 401 and 402. The joint rules were with the Speech-Language Pathologists and Audiologists program. These changes became effective immediately.

The adopted rules implement SB 40 as it relates to telehealth and the repeal of the statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice. Because SB 40 was effective immediately, the necessary changes related to statutory authority for telehealth were included in the emergency rules (discussed above).

Four-Year Rule Review Changes

The adopted rules include changes as a result of the four-year rule review related to telehealth. The Department conducted the required four-year rule review of the rules under 16 TAC Chapter 112, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021).

In response to the Notice of Intent to Review that was published, the Department received two public comments regarding 16 TAC Chapter 112. One of the comments suggested changes to the joint rules for fitting and dispensing hearing instruments by telepractice. This comment suggested changing the terminology and the definition of "hearing instrument" under 16 TAC §112.150(b). The Department did not make the suggested change, since this is the same terminology and definition that is included in Texas Occupations Code §402.001 and 16 TAC §112.2. The adopted rules, however, include changes based on the Department's review of the rules during the rule review process related to telehealth.

Reorganization Changes

The adopted rules create a new subchapter for the new telehealth rules and relocate and reorganize the existing provisions by subject matter, as recommended by Department staff.

SECTION-BY-SECTION SUMMARY

Subchapter A

The adopted rules amend Subchapter A. General Provisions.

The adopted rules amend §112.2, Definitions. The adopted rules add a definition of "telehealth" with a cross-reference to the definitions under new Subchapter N. Telehealth.

Subchapter N

The adopted rules add new Subchapter N. Telehealth.

The adopted rules add new §112.130, Definitions Relating to Telehealth. This new section includes definitions from §112.150(b), as necessary. Other definitions are found in existing §112.2.

The adopted rules make clean-up changes to the definitions of "client site," "facilitator," and "provider site." The adopted rules add a definition of "in-person." The definition of "provider" has been expanded to include apprentice permit holders and temporary training permit holders who have completed the direct supervision training requirements. This change will allow additional providers to provide telehealth services.

The definition of "telecommunications" is updated to include the word "synchronous." The definition of "telecommunications technology" is updated to include a smart phone, or any audio-visual, real-time, or two-way interactive communication system, and to clarify the current reference to telephone in the definition.

The adopted rules replace the term "telepractice" with the term "telehealth." This change provides consistency in terminology across provisions and reflects the terminology used in Texas Occupation Code, Chapter 51, as amended by S.B. 40, and Texas Occupations Code, Chapter 111, Telemedicine and Telehealth. The reference to "telepractice" was found in Texas Occupations Code §402.1023, which was repealed.

The adopted rules update the definition of "telehealth" (formerly "telepractice") to provide for the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of services to a client from a provider, and to include assessments, interventions, or consultations regarding a client. The adopted rules update the definition of "telehealth services" to include assessments, interventions, and/or consultations regarding a client.

The adopted rules add new §112.132, Requirements for Providing Telehealth Services and Using Telehealth. This new section contains most of the provisions under §112.150(c) - (n). These provisions have been reorganized by subject matter with the new provisions, and the terminology has been updated to use the terms "telehealth" and "telehealth services."

New §112.132(a) addresses the applicability of the subchapter. Except where noted, the subchapter applies to hearing instrument fitters and dispensers, apprentice permit holders, and tem-

porary training permit holders, as authorized under this subchapter. This subsection also addresses the applicability of other laws.

New §112.132(b) addresses licensure and scope of practice requirements related to providing telehealth services. This subsection also specifies that an apprentice permit holder may provide telehealth services under their approved supervisor's license according to the specified requirements. A temporary training permit holder may provide telehealth services, as directed by their supervisor, according to the specified requirements, but only after the direct supervision training requirements are completed.

New §112.132(c) addresses competence and standard of practice. The subsection includes provisions regarding provider competence in the services being provided and the methodology and equipment being used; the standard of practice being the same for services provided via telehealth as services provided in-person; and the responsibility of a provider to determine whether a particular service or procedure is appropriate to be provided via telehealth.

New §112.132(d) addresses the use of facilitators to assist a provider in providing telehealth services. This subsection includes provisions regarding the facilitator's qualifications, training, and competence, as appropriate; the tasks that may be performed; the responsibilities of the provider; and the required documentation.

New §112.132(e) addresses technology and equipment. This subsection includes provisions regarding using telecommunications technology and other equipment that the provider is competent to use, and only providing telehealth services if the telecommunications technology and equipment are appropriate for the services to be provided; are properly calibrated, if appropriate, and in good working order; and are of sufficient quality to deliver equivalent service and quality to the client as if those services were provided in-person.

New §112.132(f) addresses client contacts and communications. This subsection provides that the initial contact between a provider and a client may be at the same physical location or through telehealth, as determined appropriate by the provider. This subsection requires consideration of certain factors in determining the appropriateness of providing services via telehealth and requires a notification of telehealth services be provided to a client.

New §112.132(g) addresses records and billing. This subsection includes provisions regarding maintenance of client records; documentation of telehealth services; and reimbursement of telehealth services.

New §112.132(h) addresses hearing instruments. This subsection includes a provision regarding digital adjustments of hearing instruments through telecommunications technology by a provider.

Subchapter P

The adopted rules repeal Subchapter P. Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice.

The adopted rules repeal existing §112.150, Requirements Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice. The statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice were repealed by SB 40, effective immediately. The definitions under §112.150(b) are included in §112.2 and new §112.130, as necessary. Most of the remaining provisions under §112.150(c) - (n) have been relocated to new §112.132 under new Subchapter N. Telehealth, and have been reorganized by subject matter with the new provisions.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5713). The deadline for public comments was October 11, 2021. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Hearing Instrument Fitters and Dispensers Advisory Board met on November 9, 2021, to discuss the proposed rules. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on December 7, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §112.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER N. TELEHEALTH

16 TAC §112.130, §112.132

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted rules.

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

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SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §112.150

STATUTORY AUTHORITY

The adopted repeal is adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeal is also adopted under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the adopted repeal.

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

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CHAPTER 115. MIDWIVES

16 TAC §115.14, §115.115

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 115, §115.14 and §115.115, regarding the Midwives Program, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6187). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules add specific uterine and fetal heart rate conditions to the list of conditions during labor or delivery that require a midwife to initiate immediate emergency transfer of a client to a physician. The adopted rules provide standards for assessing fetal heart rates by intermittent auscultation and require midwives to complete two hours of continuing education covering the topic as a condition for license renewal. These changes are necessary to implement recommendations of the Standard of Care workgroup of the Midwives Advisory Board to clarify the standards of care for midwives and ensure that all midwives possess the knowledge and skills necessary to meet the standards.

The adopted rules also provide an audit system for reporting completion of continuing education for license renewal and make other clean-up changes to the license renewal provisions. These changes are necessary to implement recommendations by Department staff to improve the effectiveness and efficiency of the program.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §115.14, License Renewal, by rephrasing subsection (a) for clarity; removing from subsection (a)(1) unnecessary details about the application form; rephrasing subsection (a)(2) for clarity; adding language to subsection (a)(4) to allow the Department to accept an equivalent to the neonatal resuscitation certificate issued by the American Academy of Pediatrics; rephrasing subsection (a)(5) for consistency with other fee references; changing the punctuation in subsection (a)(6); adding new subsection (a)(7) to relocate the requirement for human trafficking prevention training from subsection (b); adding to subsection (b) a new license renewal requirement of two hours of continuing education covering the topic of assessing fetal heart rates by intermittent auscultation; adding new subsection (c) to provide an audit system for reporting completion of continuing education; and adding new subsection (d) to provide the process for the audit system and the responsibilities of licensees.

The adopted rules amend §115.115, Labor and Delivery, by rephrasing and expanding subsection (e)(6) to provide clarity and list specific examples of fetal heart rate conditions that require immediate emergency transfer of the client to a physician; adding to subsection (e)(16) "uterine tachysystole" as a condition requiring immediate emergency transfer of the client to a physician; relocating the language in current subsection

(e)(16) to adopted new subsection (e)(17); and adding new subsection (f) to require intermittent auscultation to be performed as recommended by the American College of Nurse-Midwives.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6187). The deadline for public comments was October 17, 2021. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment -- One comment opposes the new requirement in §115.14(b) for two of the 20 continuing education hours submitted for each license renewal to cover the topic of assessing fetal heart rates by intermittent auscultation. The comment states that two hours is insufficient to address the complexity of the subject.

Department Response -- The Department disagrees with the comment because the Midwives Advisory Board has determined that two hours of continuing education for each license renewal is the appropriate requirement to address the subject. The Department made no changes to the proposed rules in response to this comment.

Comment -- One comment opposes the proposed changes to §115.115(e)(6) regarding fetal heart rate conditions that require emergency transfer of the client to a physician. The comment states that the conditions listed in proposed new subparagraphs (A) - (D) encompass conditions that are often present in normal labor or delivery, and this would require emergency transfer in situations that are not actually emergencies. The comment also states that the condition listed in proposed new subparagraph (D) would require the use of electronic fetal monitoring, which requires unportable equipment that midwives are not trained to use. The comment recommends amending subsection (e)(6) to read as "abnormal fetal heart rate pattern".

Department Response -- The Department disagrees with the comment because the Midwives Advisory Board, which includes an obstetrician-gynecologist and a pediatrician, has determined that the conditions listed in proposed new subparagraphs (A) - (D) are serious conditions that indicate fetal distress and can be detected without the use of electronic fetal monitoring. The Department made no changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Midwives Advisory Board met on November 8, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on December 7, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 203, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the adopted rules.

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

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CHAPTER 117. MASSAGE THERAPY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter A, §117.2, Subchapter F, §§117.50, 117.55, 117.58, 117.59, 117.62, 117.66, 117.67, and 117.68, Subchapter G, §117.82, and Subchapter H, §§117.91 and 117.92, regarding the Massage Therapy Program. Section 117.50, concerning Massage School License--General Requirements and Application, and §117.59, concerning Massage School Curriculum Outline and Internship, are adopted with changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5125). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 117 implement Texas Occupations Code, Chapter 455.

The adopted rules are necessary to implement bills passed in the 87th Legislature, Regular Session, and update the Massage Therapy rules. Specifically, the adopted rules implement Senate Bill 1130, 87th Legislature, Regular Session (2021), which expressly allows massage schools to teach certain subjects through distance learning. The adopted rules also implement House Bill 1540, 87th Legislature, Regular Session (2021), which amended the definition of "sexual contact" in the Massage Therapy statute. Additionally, the adopted rules include clarification and clean-up changes.

The adopted rules also include changes in response to violence and other misconduct against massage therapists, including the shootings at massage establishments near Atlanta, Georgia. These amendments were recommended by department staff and the Massage Therapy Advisory Board's standard of care workgroup.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §117.2 by adding a definition for "distance learning" and renumbering the remaining definitions.

The adopted rules amend §117.50 by adding subsection (k), which requires department approval for distance learning. Changes were made to this subsection in response to comments received. Specifically, this subsection no longer requires

a massage school that has already been approved for distance learning to obtain additional approval before changing the school's technology or method of providing distance learning, or before offering additional instruction through distance learning. Instead, the massage school will be required to notify the Department after making the change.

The adopted rules amend §117.55 to require massage schools to maintain and make available for department inspection the documentation related to distance learning. The adopted amendments to §117.55 also allow the department to inspect a massage school's instruction, including the instruction offered through distance learning.

The adopted rules amend §117.58 by updating the responsibilities of a massage school's designated contact person to include the organization of all instruction, including instruction through distance learning.

The adopted rules amend §117.59 to include detail related to distance learning. Specifically, the adopted amendments: update the language in subsection (c) to refer to instructional hours and instruction time; update subsection (d) to require an instructor to be physically present with the student during any in-person hours, and to require that any make-up work completed through distance learning comply with the distance learning provisions in the chapter; require in subsection (e) that the internship be completed at a licensed massage school and not through distance learning; update subsection (h) to require a school to provide all instruction at the physical site where the student enrolled or through distance learning (if otherwise allowed), unless otherwise agreed to by the student and the educational program; and update subsection (i) to refer to instruction. The adopted amendments to §117.59(m) include requirements that massage schools must comply with if they offer distance learning. These requirements relate to verifying the student's identity, tracking student hours, monitoring the student's participation, offering an opportunity for direct interaction between the instructor and the student, providing instruction involving academic engagement, maintaining documentation, ensuring that students have all necessary educational materials, and using a time clock or similar technology in distance learning. The adopted amendments provide examples of instruction that involves academic engagement. The adopted amendments to subsection (m) also prohibit schools from using distance learning to provide the instruction required by Occupations Code, Section 455.156(b)(1)(A). In addition to distance learning-related amendments, the adopted rules amend subsection (n) to require that massage schools offer information in protecting the safety of massage therapists, including steps to take if a client initiates any verbal or physical contact with the massage therapist that is sexual in nature. This information may be provided as part of the minimum 500-hour supervised course of instruction, at any time during the 500 hours. Additionally, the adopted amendments to §117.59(f) clarify that a massage therapy instructor must be available on the premises of the school and be immediately available to a student during the hands-on experience during the internship. Changes were made to this section in response to comments received. Specifically, language in subsection (m) has been added to better describe direct interaction between an instructor and a student. Additionally, the terminology for "interactive" instruction has been changed to instruction that involves "academic engagement," and a description of this term is provided. The list of acceptable activities has also been updated to include completing and submitting an academic assignment. And subsection (m) has been reorganized into additional paragraphs for clarity.

The adopted rules amend §117.62 by updating the language in subsection (d)(3) to refer to all instructional hours, including hours completed through distance learning.

The adopted rules amend §117.66 by updating the language in subsection (d) to refer to instruction rather than classes.

The adopted rules amend §117.67 to clarify that massage schools must report the hours that students successfully complete. The adopted amendments also allow the department to require that massage schools report the location where hours were completed or if hours were completed through distance learning.

The adopted rules amend §117.68 by updating the language in subsection (c) to refer to instruction rather than classes.

The adopted rules amend §117.82 by adding solicitation of prostitution to the definition of "sexual contact" in the section.

The adopted rules amend §117.91 by adding two required statements to the consultation document: one statement that the licensee may end the massage session if the licensee feels uncomfortable for any reason, and one statement that the licensee must immediately end the massage statement if a client initiates any verbal or physical contact that is sexual in nature. The adopted rules also include clean-up changes in subsection (b). These changes would require the initial consultation to be updated if a client's reason for seeking massage therapy changes at any time or any of the information in subsections (a)(1) through (a)(3) is modified.

The adopted rules amend §117.92 by adding solicitation of prostitution to the description of "sexual contact" in the section.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5125). The deadline for public comments was September 20, 2021. The Department received 17 comments from interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment--One commenter opposed allowing certain courses to be taught through distance learning. The commenter agreed with allowing certain subjects to be taught through distance learning but stated that there should be a process for approving those courses. The commenter also mentioned that certain continuing education courses could be taught through distance learning.

Department Response--The Department agrees with the comment in part and disagrees in part. SB 1130 expressly allows certain subjects to be taught through distance learning, and the Department does not have authority to change this in the rules. The Department notes that the proposed rules contain an approval process for courses that are taught through distance learning. The portion of the comment regarding continuing education is outside the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter believes that the proposed rules should require that a licensed massage therapy instructor teach any course offered through distance learning.

Department Response--The Department disagrees with the comment. The courses that may be taught through distance learning are subjects such as anatomy, physiology, and kinesiology, which have long been taught by persons who may or may not be licensed massage therapy instructors. The Department does not believe that the availability of distance learning warrants changing this in the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter would like for the Department to offer a course, for a fee, that covers updated laws and rules.

Department Response-- This comment is outside the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--A New Beginning School of Massage Killeen opposed the proposed changes to 16 TAC §117.59(h) but then asked that the comment be disregarded as the commenter had misread the proposed changes.

Department Response--The Department takes note of the comment and that the commenter asked that it be disregarded. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter questioned how the proposed rules would interact with online consultation forms. The commenter also asked how massage therapists should approach online documentation, and whether the Department will urge booking systems to make their online consultation forms more flexible and free to customize.

Department Response--The Department believes that the proposed rules are sufficiently clear that the requirements apply to all consultation documents, whether on paper or electronic. The remainder of this comment is outside the scope of the proposed rules, as the Department does not regulate companies that offer online documentation and booking systems. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter opposed SB 1130 and offering massage therapy instruction through distance learning.

Department Response--The Department disagrees with the comment. SB 1130 expressly allows certain subjects to be taught through distance learning, and the Department does not have authority to change this in the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter expressed support for the proposed rules regarding the consultation document.

Department Response--The Department appreciates the comment. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter expressed support for the proposed rules regarding distance learning and the consultation document. Additionally, the commenter encouraged the Department to add language that would prohibit massage therapists from discriminating against clients when choosing to end a massage session.

Department Response--The Department appreciates the comment and opposes the portion of the comment suggesting that anti-discrimination language be added. The Department notes that there are anti-discrimination laws that exist outside of the massage therapy statute and rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--Massage Envy Texas submitted two comments and Trinity Health Spa submitted one comment on the proposed rules. The comments disagreed with the proposed rules in part and agreed in part. Specifically, the commenter questioned the need for written approval prior to changing technology or method of providing distance learning; questioned the need for putting the words "in-person" in the requirement that an instructor be physically present with students during classroom hours; believes that there should be an option for the internship to be completed through distance learning or at sites other than massage schools; noted that the proposed rules refer to 40 hours in an internship while the statute requires 50 hours in an internship; would like for the rules to allow licensed massage therapy instructors to be immediately available to internship students through electronic communication; requested clarification regarding the meaning of "direct interaction" and whether it conflicted with massage schools being able to offer distance learning through a method other than live instruction; opposes the requirement for massage schools to provide in-person instruction in massage therapy techniques, theory, and practice; states that timekeeping errors by students are to be expected, and that a system benefitting students and massage schools alike would be beneficial; and questions the need for massage schools to report whether hours were completed remotely or in-person at the school. The commenter agreed with the proposed changes that would add a sentence to the consultation document to say that the licensee may end the massage session.

Department Response--The Department agrees with the comment in part and disagrees in part. The Department agrees that massage schools that have been approved to provide distance learning should have the flexibility to change the technology they use or expand their distance learning course offerings without getting prior approval. The Department edited the proposed rules to allow this, while still requiring massage schools to notify the Department of the changes they have made. The Department also agreed that the meanings of "direct interaction" and what was previously called "interactive" instruction could be better described. The Department has changed the proposed rules to provide more detail and to clarify that these are two separate requirements. The requirements do not conflict with schools being able to teach the topics in Texas Occupations Code §455.156(b)(1)(B)-(H) through methods other than live instruction. Regarding timekeeping, the Department agrees that errors are to be expected, and believes that the proposed rules provide flexibility for massage schools to choose a system that accurately tracks student hours and works best for the school and their students. The Department disagrees regarding 16 TAC §117.59(d). The words "in-person" are necessary to distinguish between physical classrooms and virtual classrooms. The Department also disagrees regarding the internship. Allowing the internship at sites other than a massage school would not conform with the massage therapy statute and rules, and has implications for public health and safety. Regarding the internship instructor, the Department disagrees that the rules should allow the massage therapy instructor supervising the internship to be immediately available to the student through electronic communication. Most of the internship hours are hands-on, and it is important that the instructor is on-site at the internship so that the instructor can step in and physically assess the client, should the

student or the client need assistance. The Department also believes that the instruction in massage therapy techniques, theory, and practice is best provided in-person as these are hands-on skills that are being taught, and massage therapy is a hands-on profession. This comports with the requirements of SB 1130. Regarding the number of hours in the internship, the Department notes that the proposed §117.59(e) refers to "40 hours of hands-on massage therapy experience," which aligns with the requirement in Texas Occupations Code §455.159(a)(2) for 40 hours of hands-on experience. According to Texas Occupations Code §455.159(d), a student participating in an internship may spend the other 10 hours of the internship making appointments with clients, interviewing clients, collecting and reviewing a client evaluation with the student's supervisor, and performing other tasks necessary to the business of providing massage therapy to the public. Finally, the Department disagrees that the proposed rules should not allow the Department to require massage schools to report whether hours were completed through distance learning or on-site. This provision would allow the Department to collect data regarding the number of hours that are taught through distance learning.

Comment--Sterling Health Center opposed the proposed rules. The commenter questioned the need for Department approval before a massage school changes the technology or method of providing distance learning or before offering additional instruction through distance learning. The commenter also expressed that the requirement to report whether student hours are completed on-site or via distance is unnecessary, believes that rule language regarding exam eligibility is unnecessary, and disagreed with requiring the consultation document to be updated every time there is a change in the type of massage therapy services or techniques the licensee anticipates using. In particular, the commenter stated that this requirement is difficult to administer as there are many modalities and techniques, and they may change during the course of a massage session.

Department Response--The Department agrees with the comment in part and disagrees in part. The Department agrees that massage schools that have been approved to provide distance learning should have the flexibility to change the technology they use or expand their distance learning course offerings without getting prior approval. The Department edited the proposed rules to allow this, while still requiring massage schools to notify the Department of the changes they have made. The Department disagrees that the proposed rules should not allow the Department to require massage schools to report whether hours were completed through distance learning or on-site. This provision would allow the Department to collect data regarding the number of hours that are taught through distance learning. The Department also disagrees regarding the consultation document. The rule requires that the consultation document be updated when there is a change in the type of massage therapy services or techniques the licensee *anticipates* using during the massage therapy session. Therefore, a new consultation document does not need to be executed during the session. Finally, the portion of the comment regarding exam eligibility is outside the scope of the proposed rules.

Comment--DEEP Academy School of Massage opposed the proposed rules in part and agreed in part. The commenter expressed that any requirements beyond tracking student attendance and ensuring the student's identity are unnecessary. In particular, the commenter opposed any requirements regarding methods of instruction for distance learning, a requirement to offer an opportunity for direct interaction with an instructor, and requirements that any portion of the instruction be interactive. The commenter also opposed requiring massage schools to obtain additional approval before changing the technology or method of providing distance learning. The commenter proposed language requiring the Department to grant approval if the massage school plans to provide instruction in accordance with distance learning rules. The commenter also proposed language clarifying the requirement regarding direct interaction with an instructor. Additionally, the commenter believes that completing a reading assignment or an academic assignment should be acceptable distance learning activities. The commenter also suggested adding language that the commenter believes would clarify that the requirements regarding a master attendance record apply only if the massage school has scheduled instruction. Finally, the commenter agreed with the requirement for massage schools to provide information about protecting the safety of the massage therapist, but believes that it should apply to all schools, whether the school provides instruction through distance learning or not.

Department Response--The Department agrees with the comment in part and disagrees in part. The Department agrees that massage schools that have been approved to provide distance learning should have the flexibility to change the technology they use or expand their distance learning course offerings without getting prior approval. The Department edited the proposed rules to allow this, while still requiring massage schools to notify the Department of the changes they have made. The Department also agreed that the requirement for "direct interaction" could be better described, and has changed the proposed rules to provide more detail regarding this. Additionally, the Department agreed that completing an academic assignment should be an acceptable distance learning activity and made changes to the proposed rules accordingly. The Department disagrees that tracking student attendance and verifying student identity are the only distance learning requirements that are needed. The Department believes that the requirements regarding distance learning in the proposed rules are necessary to ensure that massage students receive adequate instruction, and to comply with the requirement in Texas Occupation Code §455.156 for students to receive a supervised course of instruction. The proposed rules also help massage schools ensure that students satisfactorily complete their massage therapy studies, as required by the statute, and are making satisfactory progress in the educational program. The Department also disagrees with the commenter's proposed language requiring the Department to grant approval, as there may be other reasons why approval must be withheld that the Department cannot now anticipate. Regarding a reading assignment through distance learning, the Department believes that this does not comport with the statutory requirement for a supervised course of instruction, even if there is an opportunity for interaction with an instructor. The Department also disagrees with the commenter's proposed language regarding a master attendance record as the proposed language applies to all massage schools, regardless of how many hours are scheduled each day. Finally, the Department appreciates the comment regarding massage schools providing information about protecting the safety of the massage therapist. The Department does not believe the language should be amended, however, as the language that was published applies to all massage schools.

Comment-- The Federation of State Massage Therapy Boards expressed support for the proposed rules regarding distance learning, the consultation document, and updating the definition of "sexual contact" in the massage therapy rules. Additionally,

the commenter stated that the definition of "massage school" should be more robust to protect against fraudulent schools; questioned whether the number of internship hours was inconsistent in the rules; and expressed general concerns that expanding distance learning in the absence of sufficient oversight and regulatory accountability could threaten the health and safety of consumers, students, and massage therapists.

Department Response--The Department appreciates the comment and opposes the portion of the comment regarding the number of internship hours. The Department believes that the proposed rules ensure adequate instruction for students while also implementing sufficient safeguards against fraud. Regarding the number of hours in the internship, the Department notes that the proposed 16 TAC §117.59(e) refers to "40 hours of hands-on massage therapy experience," which aligns with the requirement in Texas Occupations Code §455.159(a)(2) for 40 hours of hands-on experience. The remainder of the comment is outside the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment--One commenter opposed proposed rules that would allow distance learning that is not live instruction. The commenter also suggested that the Department define what "interactive" means in 16 TAC §117.59(m).

Department Response--The Department agrees in part and disagrees in part. The Department agrees that the requirements regarding distance learning should be explained in more detail, and has made changes to 16 TAC §117.59(m) in that regard. The Department disagrees with the portion of the comment regarding live instruction. SB 1130 expressly allows certain subjects to be taught through distance learning and specifies that distance learning is not limited to live instruction. The Department does not have authority to change this in the rules.

Comment--One commenter expressed support for the proposed rules regarding the consultation document and distance learning, generally. However, the commenter disagrees with the Department's assessment that the proposed rules will have no fiscal impact on massage schools. In particular, the commenter asserts that there is a cost associated with offering distance learning technology, and massage schools that do not offer distance learning will face competition from schools that do offer it.

Department Response--The proposed rules implement SB 1130, which was passed by the Legislature and signed into law by the Governor. The Department is not imposing any fees on massage schools who choose to offer distance learning, and the choice of whether to offer distance learning, as allowed by SB 1130, is discretionary. The Department is unable to estimate any indirect economic costs or indirect economic benefits that may arise due to the availability of distance learning. The Department did not make any changes to the proposed rules in response to this comment.

Comment--The American Massage Therapy Association expressed support for the proposed rules regarding distance learning, in particular rules requiring detailed oversight. The commenter also stated that it does not support distance learning for any required hands-on or clinical hours.

Department Response--The Department appreciates the comment. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Massage Therapy Advisory Board met on October 18, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §§117.50 and 117.59. These changes were made in response to public comment and are recommended by the Department. At its meeting on December 7, 2021, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §117.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 455, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

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 December 10, 2021.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

16 TAC §§117.50, 117.55, 117.58, 117.59, 117.62, 117.66 - 117.68

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 455, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

§117.50. Massage School License--General Requirements and Application.

(a) Unless exempt, an individual or entity who provides at a minimum the course of instruction required for licensure to one or more students constitutes a massage therapy educational program and must obtain a massage school license.

(b) To be eligible for a massage school license, an applicant must:

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

(2) submit proof of ownership of the building or a lease agreement for the first twelve (12) months of operation;

(3) provide a current financial statement reviewed by a public accountant and finalized no more than 180 days prior to the application date;

(4) pay the required fee under §117.100;

(5) successfully pass a criminal history background check performed by the department in accordance with the Act, the department's criminal conviction guidelines, and pursuant to Texas Occupations Code, Chapters 51 and 53;

(6) maintain adequate space and equipment to provide training to enrolled students;

(7) comply with all health and safety standards established by the Act and this chapter; and

(8) submit the name and contact information for the school's designated contact person, if applicable.

(c) A massage school must be inspected and approved by the department prior to operation.

(d) The massage school license must be displayed in an appropriate and public manner at the location of the educational program.

(e) A massage school must properly account for the hours granted to each student, in a manner prescribed by the department.

(f) A school shall not engage in any act, directly or indirectly, that grants or approves student hours that were not accrued in accordance with this chapter.

(g) A criminal history check performed under this subsection requires an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(h) The department may not issue a license to a person who does not comply with the requirements of this section.

(i) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(j) For purposes of this section, if the applicant for a license is an entity, the applicant must submit fingerprints as required by this section for each individual who:

(1) personally or constructively holds, including as the beneficiary of a trust:

(A) at least 10 percent of the entity's outstanding stock; or

(B) more than $25,000 of the fair market value of the entity;

(2) has the controlling interest in the entity;

(3) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits, proceeds, or capital gains of the entity;

(4) is a member of the board of directors or other governing body of the entity; or

(5) serves as:

(A) an elected officer of the entity; or

(B) a general manager of the entity.

(k) A massage school must obtain department approval in writing before offering instruction through distance learning. A school must notify the department in writing when changing the technology or method of providing distance learning or offering additional instruction through distance learning.

§117.59. Massage School Curriculum Outline and Internship.

(a) Each massage school shall follow the curriculum outline prescribed by the department for the minimum 500-hour supervised course of instruction.

(b) A student must successfully complete the first 250 hours of the supervised course of instruction, including the successful completion of at least 100 hours of massage therapy techniques and theory, before the student is eligible to enter the internship program.

(c) A classroom hour or instructional hour shall include at least 50 clock minutes of actual instruction time and may include a maximum of 10 minutes of break time. Break time for hours which are taught consecutively in one sitting (i.e., in one evening) may be aggregated into a single break time during those consecutive hours, not to exceed 3-hour blocks of instruction, but not at the end of those hours. The 10 minutes of break time may not be accumulated and used in lieu of lunch or dinner breaks.

(d) An instructor must be physically present with the student(s) during any in-person classroom hours, including in-person make-up work. Any make-up work completed through distance learning must comply with the distance learning provisions in this chapter.

(e) An internship program must provide a student with a minimum of 40 hours of hands-on massage therapy experience at the location of the student's enrollment. A student enrolled at an additional location shall not be required to travel to another location to complete the internship. The internship may not be offered through distance learning. The internship must be completed at a massage school licensed under this chapter.

(f) During the hands-on experience during the internship, a massage therapy instructor must be available on the premises of the massage school and be immediately available to the student(s).

(g) A massage school shall not require a student to advertise for clients or to obtain clients as part of the internship program. At the student's option and with the massage school's permission, a student may obtain clients for the student's hands-on massage therapy experience.

(h) Unless otherwise agreed to by both the student and the massage therapy educational program, a massage school must provide all of the minimum 500 hours of the supervised course of instruction at the physical location of the licensed massage school where the stu-

dent enrolled or, if otherwise allowed under this chapter and the Act, through distance learning.

(i) A massage school shall schedule instruction and internship clients so that the students will be able to complete the program during the length of time stipulated in the pre-enrollment information. No evening class or required instruction may be scheduled to extend beyond a reasonable time.

(j) Individuals who have completed the required minimum 500-hour supervised course of instruction, including the 50-hour internship, are eligible for examination and licensure.

(k) A massage school shall not allow a student to receive any form of compensation for massage therapy or other massage therapy services.

(l) A massage school shall not allow, authorize, or contract with a student enrolled in any course or portion of a course offered by the school to provide massage therapy or other massage therapy services to the public for compensation in excess of the internship.

(m) Distance learning.

(1) A massage school must verify the identity of a student receiving instruction through distance learning.

(2) A massage school must accurately track the hours each student completes through distance learning.

(3) A massage school must monitor each student's participation in distance learning to ensure that the student is receiving instruction.

(4) Any class, lecture, or recitation, whether offered through live instruction or not, must offer an opportunity for direct interaction between the instructor and the student. The direct interaction may be synchronous or asynchronous. If the direct interaction is asynchronous, the instructor must respond within a reasonable amount of time.

(5) When distance learning is provided through a method other than live instruction, the instruction must involve academic engagement. Academic engagement is active participation by a student in an instructional activity related to the student's course of study. It includes but is not limited to:

(A) participating in an activity where there is an opportunity for interaction between the instructor and the student;

(B) completing and submitting an academic assignment;

(C) taking an assessment or an exam;

(D) participating in an interactive tutorial, webinar, or other interactive computer-assisted instruction;

(E) participating in a study group, group project, or an online discussion that is assigned by the school; and

(F) interacting with an instructor about academic matters.

(6) A massage school must document compliance with paragraphs (1)-(5) for each student who receives instruction through distance learning.

(7) A massage school must ensure that students receiving instruction through distance learning have the educational materials necessary to fulfill all course requirements.

(8) A massage school may not use distance learning to provide the instruction required by Section 455.156(b)(1)(A) of the Act.

(9) A massage school using a time clock or similar technology to track student hours completed through distance learning may not alter the time clock records, except in a documented case of technological failure or other situation which is documented by the school.

(n) As part of the minimum 500-hour supervised course of instruction, a massage school shall provide information in protecting the safety of a massage therapist, including steps to take if a client initiates any verbal or physical contact with the massage therapist that is intended to arouse or gratify the sexual desire of either person. This information may be provided at any time in the 500 hours.

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

SUBCHAPTER G. LICENSED MASSAGE ESTABLISHMENTS

16 TAC §117.82

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 455, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

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

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Brad Bowman
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SUBCHAPTER H. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §117.91, §117.92

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 455, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted rules.

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

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Brad Bowman
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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.14

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.14, concerning exemption from licensure for certain military spouses. The adopted amendment lists what a military spouse must submit to establish residency in Texas, and the rule is adopted in accordance with House Bill 139 of the 87th Texas Legislature, Regular Session (2021), and Chapter 55, Texas Occupations Code. This amendment is adopted without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7014). The rule will not be republished.

No comments were received regarding adoption of the amendment.

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

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 December 11, 2021.

TRD-202104999
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: December 31, 2021
Proposal publication date: October 15, 2021
For further information, please call: (512) 305-8910

CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.10

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §103.10, concerning exemption from licensure for certain military spouses. The adopted amendment lists what a military spouse must submit to establish residency in Texas, and the rule is adopted in accordance with House Bill 139 of the 87th Texas Legislature, Regular Session (2021), and Chapter 55, Texas Occupations Code. This amendment is adopted with no changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7015). The rule will not be republished.

No comments were received regarding adoption of the amendment.

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

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

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §108.74

The State Board of Dental Examiners (Board) adopts this new rule 22 TAC §108.74, concerning call coverage agreements. The adopted rule sets forth minimum requirements relating to a dentist's provision of call coverage services for another dentist's established patients, and is implemented pursuant to House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 254, Texas Occupations Code. This rule is adopted with no changes to the proposed text as published in

the October 15, 2021, issue of the *Texas Register* (46 TexReg 7016). The rule will not be republished.

No comments were received regarding adoption of this rule.

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

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

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TRD-202105002
Lauren Studdard
General Counsel
State Board of Dental Examiners
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Proposal publication date: October 15, 2021
For further information, please call: (512) 305-8910

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

SUBCHAPTER P. ASSESSMENT OF ADMINISTRATIVE PENALTIES

25 TAC §229.261

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §229.261, concerning Assessment of Administrative Penalties. The amendment to §229.261 is adopted without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6192). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption revises the administrative penalty level ranges to facilitate transparent and efficient compliance actions. DSHS developed penalty matrices to provide flexibility in assessing administrative penalties within food and drug programs. The rule revision adjusts penalty levels and merely expands the minimum end of the penalty range.

The rule currently provides a set of ranges for administrative penalties based on the severity level for food and drug programs as well as tattoo and body-piercing studios. The adoption revises the penalty range by stating that penalties can be assessed up to the maximum amount provided in each severity level. This change alleviates any conflicts with the rule that may arise when assessing administrative penalties using the penalty matrices.

Additional amendments removed two programs that are no longer DSHS's jurisdiction, corrected grammar, and formatted the rule.

COMMENTS

The 31-day comment period ended October 18, 2021. During this period, DSHS did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §146.015, §146.019, §431.241, §431.054, §432.011, §432.021, §437.0056, and §437.018, which provide DSHS with the authority to adopt rules for the efficient enforcement of this chapter and adopt specific rules for the assessment of administrative penalties; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for DSHS operation and provision of health and human services and for the administration of Texas Health and Safety Code, Chapter 1001.

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 December 6, 2021.

TRD-202104837
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: December 26, 2021
Proposal publication date: September 17, 2021
For further information, please call: (512) 834-6670

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER D. FACILITY CONSTRUCTION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §§554.300, 554.301, 554.310, 554.311, 554.313 - 554.317, 554.321, 554.322, 554.326, 554.330, 554.332, 554.336, 554.337, 554.339, 554.340, 554.345, 554.361, 554.1001, 554.1207, and 554.1601 in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification.

The amendments to §§554.321, 554.339, 554.340, 554.345, 554.361, and 554.1207 are adopted with changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4271). These rules will be republished.

The amendments to §§554.300, 554.301, 554.310, 554.311, 554.313 - 554.317, 554.322, 554.326, 554.330, 554.332, 554.336, 554.337, 554.1001, and 554.1601 are adopted without changes to the proposed text as published in the July 16, 2021, issue of the *Texas Register* (46 TexReg 4271) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments to §§554.300, 554.301, 554.310, 554.311, 554.313 - 554.317, 554.321, 554.322, 554.326, 554.330, 554.332, 554.336, 554.337, 554.339, 554.340, 554.345, and 554.361 update facility fire marshal inspection requirements, correct incorrect rule cross-references, and amend other facility construction requirements for clarity and consistency. The changes to facility construction regulations enhance clarity and consistency for nursing facilities.

The amendments to §554.1001 require a nursing facility to provide annual infection control training for nurse aides. The changes to in-service training requirements help protect nursing facility residents from infections.

The amendments to §554.1207 and §554.1601 implement House Bill (H.B.) 1848 and H.B. 2050, 86th Legislature, Regular Session, 2019. H.B. 1848 requires nursing facilities to have an infection prevention and control program that monitors key infectious agents, including multi-drug resistant organisms, and includes procedures for making rapid influenza tests available to residents. H.B. 2050 specifies that consent to the prescription of an antipsychotic or neuroleptic medication for a nursing facility resident must be given in writing on an HHSC-prescribed form. Consent must be given by the resident or a resident's authorized representative, and the nursing facility must file the consent form in the resident's clinical record. The revisions requiring written documentation of a resident's consent to antipsychotic or neuroleptic medication will hold nursing facilities to a greater degree of accountability and further permit residents greater understanding of the medications they are consenting to receive.

The amendments also update references that became outdated when 40 TAC Chapter 19 was administratively transferred to 26 TAC Chapter 554, reflect the transfer of functions from the Texas Department of Human Services or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references.

COMMENTS

The 31-day comment period ended August 16, 2021. During this period, HHSC received comments regarding the proposed rules from three commenters: representatives from the Texas Health Care Association, Texas Long-Term Care Ombudsman, and AARP Texas State Office. None of the commenters expressed opposition to the proposed rules. However, each commenter requested changes to the text of the proposed rules. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter requested an amendment to §554.300 requiring facilities that have a locked unit or locked facility to have an Alzheimer's disease certification, as described under §554.2208.

Response: HHSC declines to make changes to require Alzheimer's disease certification for facilities with a locked unit or locked facility. These changes would require amending sections not in the scope of this rule project.

Comment: One commenter recommended amending §554.303 to require facilities to maintain a temperature of not less than 71 degrees and not more than 81 degrees during an emergency.

Response: HHSC declines to make the suggested change in this rule. Section 554.303 is not included in this rule project.

Comment: Two commenters recommended amending §554.321(a) to require the heating system in a facility to maintain a temperature of not less than 71 degrees Fahrenheit and not greater than 81 degrees Fahrenheit at the resident level in all resident-use areas. The current rule language requires the heating system to be "capable of maintaining" a temperature of not less than 71 degrees Fahrenheit.

Response: HHSC agrees that the heating system in a facility must be able to maintain a temperature of not less than 71 degrees Fahrenheit and has changed "capable of maintaining" to "maintain." HHSC also agrees to add the upper limit of 81 degrees, but the amendment is included in §554.321(b).

Comment: Two commenters requested an amendment to §554.326 requiring a facility to report to HHSC whether the facility is equipped with an operational emergency generator or other comparable emergency power source that is capable of providing continuous electricity to the facility during emergencies.

Response: HHSC declines to make the suggested change in rule. Through H.B 1423, 87th Legislature, Regular Session, 2021, HHSC is tasked with conducting a survey on the number of nursing facilities and assisted living facilities that are equipped with an operational emergency generator or comparable emergency power source that is capable of providing continuous electric utility services to the facility during severe weather events or other emergencies. This legislation requires a single survey and report and does not require on-going reporting.

Comment: Regarding §554.361, one commenter requested requiring that all nurse call systems in new facilities electronically record response times to call lights. The purpose of the request was for a facility to use information in its quality care analysis and for a resident to have access to the records that pertain to the resident.

Response: HHSC declines to make the suggested change in rule. Facilities are currently required by federal and state rule to provide appropriate care for residents. Quality of care is determined by the outcome for the resident and not solely on how quickly staff respond to the call system. Requiring a nurse call system to record response times could pose a significant financial cost to providers. Adding this amendment would require HHSC to propose the rule again, which would cause significant delays to the implementation of this rule.

Comment: Regarding §554.1001(a), one commenter recommended creating a minimum ratio for direct care staff to residents.

Response: HHSC declines to make the suggested change in rule. State nursing facility staffing rules mirror federal staffing requirements, which focus on requirements for quality of care as opposed to prescribing the number of residents per direct care staff. This allows facilities flexibility in caring for residents that require more time-intensive care than others.

Comment: One commenter recommended amending §554.1001(a)(4)(G)(ii) to remove the specific time requirements for infection control and personal protective equipment training.

The proposed rule specifies at least two hours of training on infection control and personal protective equipment per year. The commenter noted that other training requirements do not include the number of hours of training required.

Response: HHSC declines to remove the number of hours of infection control and personal protective equipment training required. Each training requirement is essential, and infection prevention and control are cornerstones to resident safety. HHSC is implementing the two-hour infection prevention and control training requirement in response to commonly found noncompliance before and during the COVID-19 public health emergency, which frequently includes noncompliance related to infection prevention and control requirements. HHSC did not specify a minimum number of hours for other required trainings in order to allow nursing facilities the flexibility to tailor the training requirements to the needs of the residents and facility. Infection prevention and control is central to all nursing facility training requirements.

Comment: Regarding §554.1201, one commenter recommended HHSC include a requirement for a facility to offer a resident physician services through the facility's medical director if the resident loses the care of another physician. The specific recommendation was to amend subsection (b) of this section to read, "The facility's medical director must serve as a resident's attending physician, subject to the resident's consent, if the resident is unable to receive medical care from another physician."

Response: HHSC declines to make the suggested change in rule. Section 554.1201 is not included in this rule project.

Comment: One commenter recommended amending §554.1601 to delete the word "rapid" from "rapid influenza diagnostic tests." The recommended language would read, "procedures for making influenza diagnostic tests available to facility residents." The commenter requested the change to account for the expiration dates for rapid tests.

Response: HHSC declines to delete the term "rapid." The amendments to §554.1601 are to implement H.B. 1848, which requires a long-term care facility's infection prevention and control plan to include "procedures for making rapid influenza diagnostic tests available to facility residents."

Comment: Regarding §554.1601(d)(1), two commenters recommended requiring policies related to individual facilities' infection prevention and control program to be accessible to the public and available upon request.

Response: HHSC declines to make the suggested change in rule. A facility's policies and procedures are already required to be available to residents, families, and others in §554.1920(a).

Comment: Regarding §554.1601(e), two commenters recommended requiring nursing facilities to offer a coronavirus vaccination in the same way nursing facilities are required to offer influenza and hepatitis B vaccinations.

Response: HHSC declines to make the suggested change in rule. Federal COVID-19 vaccine requirements are in the early stages of planning and implementation. Consequently, adding a permanent requirement into rule at this time would be premature.

DIVISION 1. GENERAL PROVISIONS

26 TAC §554.300, §554.301

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

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

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DIVISION 2. FACILITIES LICENSED BEFORE SEPTEMBER 11, 2003

26 TAC §§554.310, 554.311, 554.313 - 554.317, 554.321, 554.322

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.321. Heating, Ventilating, and Air-conditioning Systems (HVAC).

(a) The heating system must maintain a temperature of not less than 71 degrees Fahrenheit at the resident level in all resident-use areas. Auxiliary heating devices permanently installed, such as heat strips in ducts, electric ceiling-mounted heating units, and electric baseboards, may be used to augment a central heating system as approved by HHSC.

(b) The cooling system must be capable of maintaining a temperature suitable for the comfort of the residents in resident-use areas to an upper limit of 81 degrees.

(c) Air flow must be directed or adjusted so that a resident is not in direct drafts that could be harmful to the health and comfort of the resident.

(d) Unvented heating units and portable heaters are prohibited.

(e) The facility must be well ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel must be provided with functioning mechanical ventilation to change the air on a basis commensurate with the room usage. Air systems must provide for the induction and mixing of at least 10 percent outside fresh air into the facility unless otherwise approved by HHSC; that is, 100 percent continuous recirculation of interior air in most areas is not acceptable. When certain rooms or areas are dependent on a central air system for proper ventilation, including exhaust, that central air system fan must run continuously.

(f) Operable outside windows must be provided with insect screens. Outside doors must be self-closing to control entry of insects. All exterior doors must be effectively weather stripped.

(g) Heating and air conditioning systems must be provided with clean and effective air filters.

(h) Ducts and piping subject to surface condensation must be insulated to prevent condensation at least in areas which may affect sanitation or cause building deterioration.

(i) A comfortable temperature for residents when bathing must be provided.

(j) Heating, ventilating, and air conditioning systems must comply with the provisions of applicable National Fire Prevention Association (NFPA) standards. Ducts are to be of a Class A material (noncombustible). Combustion air for gas-fired equipment must be ducted from the exterior.

(k) Air flow must be designed to prevent cross contamination within any area where applicable, such as laundries and kitchens, as well as the system or facility as a whole.

(l) In relation to adjacent areas, a positive air pressure must be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air must be introduced into these rooms.

(m) In relation to adjacent areas, a negative air pressure must be provided for soiled utility rooms, soiled laundry rooms, bathrooms, toilets, and other odor-producing rooms. Air from these rooms must not be recirculated, but instead must be exhausted through ducts to the exterior by effective means.

(n) Facility temperature must be maintained for the comfort of residents.

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

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DIVISION 3. PROVISIONS APPLICABLE TO ALL FACILITIES

26 TAC §554.326

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

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DIVISION 4. CONSTRUCTION AND INITIAL SURVEY

26 TAC §554.330

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

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DIVISION 5. FACILITIES LICENSED ON OR AFTER SEPTEMBER 11, 2003 AND BEFORE APRIL 2, 2018

26 TAC §§554.332, 554.336, 554.337, 554.339, 554.340

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.339. Structural Requirements.

(a) Every building and every portion thereof must be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards.

(b) Special provisions must be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, earthquakes, or floods.

(c) The sponsor is responsible for employing qualified personnel in the preparation of plan designs and engineering and in the construction of the facility to assure that all structural components are adequate, safe, and meet the applicable construction requirements.

(d) The design of the structural system must be done by or under the direction of a professional structural engineer who is currently registered by the Texas Board of Professional Engineers and Land Surveyors in accordance with state law.

(e) The parts of the plans, details, and specifications covering the structural design must bear the legible seal of the engineer on the original drawings from which the prints are made.

(f) If the municipality has a building code, that code must govern the building requirements for the construction involved. NFPA 101 must be used for fire safety requirements. Should discrepancies between the codes arise, they must be called to the attention of HHSC.

(g) In the absence of a local building code, a nationally recognized building code must be used with regard to the construction integrity of the building. NFPA 101 must be used for fire safety requirements.

(h) Each building must be classified as to building construction type for fire resistance rating purposes in accordance with NFPA 220 and NFPA 101.

(i) Enclosures of vertical openings between floors must meet NFPA 101.

(j) All interior walls, partitions, and roof structure in buildings of fire resistive and noncombustible construction must be of noncombustible or limited combustible materials.

(k) Building insulation materials, unless sealed on all sides and edges in an approved manner, must have a flame spread rating of 25 or less when tested in accordance with NFPA 255 and NFPA 258.

§554.340. Mechanical Requirements.

The design of the mechanical systems must be done by or under the direction of a registered professional (mechanical) engineer approved by the Texas Board of Professional Engineers and Land Surveyors to operate in Texas, and the parts of the plans and specifications covering mechanical design must bear the legible seal of the engineer. Building services pertaining to utilities; heating, ventilating, and air-conditioning systems; vertical conveyors; and chutes must be in accordance with NFPA 101. Required plumbing fixtures must be in accordance with NFPA 101 and §554.334 of this chapter (relating to Architectural Space Planning and Utilization) in specific use areas.

(1) Plumbing.

(A) All plumbing systems must be designed and installed in accordance with the requirements of the plumbing code of the municipality. In the absence of a municipal code, a nationally recognized plumbing code must be used. Any discrepancy between an applicable code and these requirements must be called to the attention of HHSC.

(B) Supply systems must assure an adequacy of hot and cold water. An average rule-of-thumb design for hot water for resident usage (at 110 degrees Fahrenheit) is to provide 6-1/2 gallons per hour per resident in addition to kitchen and laundry use.

(C) Water supply must be from a system approved by TCEQ, or from a system regulated by an entity responsible for water quality in that jurisdiction as approved by TCEQ.

(D) The sewage system must connect to a system permitted by TCEQ, or to a system regulated by an entity responsible for water quality in that jurisdiction as approved by TCEQ.

(E) The minimum ratio of fixtures to residents shall be as required in §554.334(c) of this chapter.

(F) For design calculation purposes, resident-use hot water must not exceed 110 degrees Fahrenheit at the fixture. For purposes of conforming to licensure requirements, an operating system providing water from 100 degrees Fahrenheit to 115 degrees Fahrenheit is acceptable. Hot water for laundry and kitchen use must be normally 140 degrees Fahrenheit except that dish sanitizing, if done by hot water, must be 180 degrees Fahrenheit.

(G) Water closets raised to provide a seat height 17 inches to 19 inches from the floor is required for persons with disabilities.

(H) Showers for wheelchair residents must not have curbs. Tub and shower bottoms must have a slip-resistant surface. Shower and tub enclosures, other than curtains, must be of tempered glass, plastic, and other safe materials.

(I) Drinking fountains must not extend into exit corridors.

(J) Fixture controls easily operable by residents must be provided (such as lever type).

(K) Plumbing fixtures for residents must be vitreous china or porcelain finished cast iron or steel unless otherwise approved by HHSC. Bathing units constructed of class B fire rated fiberglass are acceptable for use.

(L) Hand-washing sinks for staff use are required in many areas throughout the facility in accordance with §554.334 of this chapter (relating to Architectural Space Planning and Utilization). Lavatories are required to be provided adjacent to water closets in each area.

(M) The soiled utility room must be provided with a flushing device such as a water closet with bedpan lugs, a spray hose with a siphon breaker or similar device, such as a high neck faucet with lever controls and a deep sink that is large enough to submerse a bedpan. A sterilizer for sanitizing may be used in place of a deep sink.

(N) Siphon breakers or back-flow preventers must be installed with any water supply fixture where the outlet or attachments may be submerged.

(O) Clean-outs for waste piping lines must be provided and located so that there is the least physical and sanitary hazard to residents. Where possible, clean-outs must open to the exterior or areas which would not spread contamination during clean-out procedures.

(P) All boilers not exempted by the Texas Health and Safety Code §755.022 must be inspected and certified for operation by The Texas Department of Licensing and Regulation.

(2) Heating, ventilating, and air-conditioning systems.

(A) Heating, ventilating, and air-conditioning systems must be designed and installed in accordance with the Heating, Ventilating, and Air-Conditioning Guide of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), except as may be modified by this section.

(B) Heating, ventilating, and air-conditioning systems must meet the requirements of NFPA 101 and NFPA 90A. The plans must have a statement verifying that the systems are designed to conform to NFPA 90A. Requirements for conditions related to smoke compartmentation must be in accordance with §554.336 of this chapter (relating to Smoke Compartmentation (Subdivision of Building Spaces)).

(C) Systems using liquefied petroleum gas fuel must meet the requirements of the Railroad Commission of Texas and NFPA 58.

(D) The heating system must be designed, installed, and functioning to be able to maintain a temperature of at least 75 degrees Fahrenheit for all areas occupied by residents. For all other occupied areas, the indoor design temperature must be at least 72 degrees Fahrenheit. The cooling system must be designed, installed, and functioning to be able to maintain a temperature of not more than 78 degrees Fahrenheit. A facility constructed or licensed after January 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that is capable of maintaining a temperature suitable for resident comfort within areas used by residents. Occupied areas generating high heat, such as kitchens, must be provided with a sufficient cool air supply to maintain a temperature not exceeding 85 degrees Fahrenheit at the five-foot level. Supply air volume must be approximately equal to the air volume exhausted to the exterior for these areas.

(E) Air systems must provide for mixing at least 10 percent outside air for the supply distribution. Blowers for central heating and cooling systems must be designed so that they may run continuously.

(F) Floor furnaces, unvented space heaters, and portable heating units must not be used. Heating devices or appliances must not be a burn hazard (to touch) to residents.

(G) A combustion fresh air inlet must be provided to all gas or fossil fuel operated equipment in steel ducts or passages from outside the building in accordance with NFPA 54. Rooms must also be vented to the exterior to exhaust heated ambient air in the room. Combustion air will require one vent within 12 inches of the floor and one vent within 12 inches of the ceiling.

(H) The location and design of air diffusers, registers, and return air grilles, must ensure that residents are not in harmful or excessive drafts in their normal usage of the room.

(I) In areas requiring control of sanitation, the air flow must be from the clean area to the dirty area. Air supply to food preparation areas must not be from air which has circulated places such as resident bedrooms and baths.

(J) Air from unsanitary areas such as janitors closets, soiled linen areas, utility areas, and soiled area of laundry rooms, must not be returned and recirculated to other areas.

(K) Intakes for fresh outside air must be located sufficiently distant from exhaust outlets or other areas or conditions which may contaminate or otherwise pollute the incoming fresh air. Fresh air inlets must be appropriately screened to prevent entry of debris, rodents, and animals. Provision must be made for access to such screens for periodic inspection and cleaning to eliminate clogging or air stoppage (see paragraph (3)(C)(i) of this subsection).

(L) Systems must be designed as much as possible to avoid having ducts passing through fire walls or smoke barrier walls. All openings or duct penetrations in these walls must be provided with approved automatic dampers. Smoke dampers at smoke partitions must close automatically upon activation of the fire alarm system to prevent the flow of air or smoke in either direction.

(M) Ducts with smoke dampers must have maintenance panels for inspections. The maintenance panels must be removable without tools. Means of access must also be provided in the ceiling or side wall to facilitate smoke damper inspection readily and without obstruction. Location of dampers must be identified on the wall or ceiling of the occupied area below.

(N) Fusible links are not approved for smoke dampers.

(O) Central air supply systems and/or systems serving means of egress must automatically and immediately shut down upon activation of the fire alarm system. (An exception must be approved, engineered smoke-removal systems.)

(P) Ducts must be of metal or other approved noncombustible material. Cooling ducts must be insulated against condensation drip.

(3) Ventilating and exhaust.

(A) General ventilating systems must be in accordance with paragraph (2) of this subsection.

(B) Provisions for natural ventilation using windows or louvers must be incorporated into the building design where possible and practical. These windows or louvers must have insect screens.

(C) All air-supply and air-exhaust systems must be mechanically-operated. The ventilation rates shown in the table in clause (xi) of this subparagraph must be considered as minimum acceptable rates and must not be construed as precluding the use of higher ventilation rates.

(i) Outdoor air intakes must be located as far as practical (but normally not less than 10 feet) from exhaust outlets or ventilating systems, combustion equipment stacks, medical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular exhaust and other noxious fumes.

(ii) The ventilation systems must be designed and balanced to provide the pressure relationship as shown in the table in clause (xi) of this subparagraph. A final engineered system air balance report will be required for the completed system to be furnished and certified by the installer.

(iii) The bottoms of ventilation openings must be not less than three inches above the floor of any room.

(iv) Doors protecting corridors or ways of egress must not have air transfer grilles or louvers. Corridors must not be used to supply air to or exhaust air from any room except that air from corridors may be used as make-up air to ventilate small toilet rooms, janitor's closets, and small electrical or telephone closets opening directly on corridors, provided that the ventilation can be accomplished by door undercuts not exceeding 3/4 inches.

(v) All exhausts must be continuously ducted to the exterior. Exhausting air into attics or other spaces is not permitted. Duct material must be metal.

(vi) All central ventilation or air-conditioning systems must be equipped with filters of sufficient efficiency to minimize dust and lint accumulations throughout the system and building including supply and return plenums and ductwork. Filters with efficiency rating of 80 percent or greater (based on ASHRAE) are recommended. Filters for individual room units must be as recommended by the equipment manufacturer. Filters must be easily accessible for routine changing or cleaning.

(vii) Static pressures of systems must be within limits recommended by ASHRAE and the equipment manufacturer (upstream and downstream).

(viii) In geographic locations or interior room areas where extreme humidity levels are likely to occur for extended periods of time, apparatus for controlling humidity levels (preferably between 40-60 percent) are recommended to be installed as a part of central systems and with automatic humidistat controls.

(ix) Exhaust hoods, ducts, and automatic extinguishers for kitchen cooking equipment must be in accordance with NFPA 96.

(x) Forced air exhaust must be provided in laundries, kitchens, and dishwashing areas to remove excess heat and moisture and to maintain air flow in the direction of clean to soiled areas.

(xi) Ventilation requirements for nursing areas must be according to the following table:
Figure: 26 TAC §554.340(3)(C)(xi)

(xii) With relationship to adjacent areas, a positive air pressure must be provided for clean utility rooms, clean linen rooms, and medication rooms. Conditioned supply air must be introduced into these rooms.

(4) Sprinkler systems. The following requirements are applicable to sprinkler systems:

(A) Sprinkler systems must be in accordance with NFPA 13 and this subchapter.

(B) The design and installation of sprinkler systems must meet any applicable state laws pertaining to these systems and one of the following criteria:

(i) The sprinkler system must be designed by a qualified registered professional engineer approved by the Texas Board of Professional Engineers and Land Surveyors to operate in Texas. The engineer must supervise the installation and provide written approval of the completed installation.

(ii) The sprinkler system must be planned and installed in accordance with NFPA 13 by firms with certificates of registration issued by the office of the state fire marshal that have at least one full-time licensed responsible managing employee (RME). The RME's license number and signature must be included on the prepared sprinkler drawings.

(C) Particular attention should be paid to adequate, safe, and reasonable freeze protection for all piping. The design of freeze protection should minimize the need for dependence on staff action or intervention to provide protection.

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

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DIVISION 7. SMALL HOUSE AND HOUSEHOLD FACILITIES

26 TAC §554.345

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.345. Small House and Household Facilities.

(a) This section applies to a small house or household facility that is designed to provide a non-institutional environment to promote resident-centered care. New construction of a small house or household facility, including a conversion of an existing facility, an addition to an existing facility, or rehabilitation of an existing facility, must meet the requirements of this section.

(b) A small house or household facility must comply with this chapter, except it is not required to comply with a requirement in Division 9 of this subchapter (relating to Facilities Licensed On or After April 2, 2018) if HHSC waives the requirement in accordance with subsection (c) of this section or if the requirement is modified by subsection (g) of this section.

(c) HHSC may waive a requirement in Division 9 of this subchapter if HHSC determines a waiver of the requirement would facilitate the implementation of resident-centered care. To request a waiver of a requirement, a facility must submit plans to HHSC according to §554.344 of this subchapter (relating to Plan Review). The plans must include a statement from an architect identifying which requirements the facility is requesting to be waived and explaining how the waiver would contribute to the goals of resident-centered care.

(d) A small house or household facility must be designed and equipped to provide a homelike environment that promotes resident-centered care.

(e) A small house or a household within a facility must:

(1) have no more than 16 bedrooms as described in subsection (g)(2) of this section;

(2) have living, dining, social, and staffing areas exclusively within and for the house or household; and

(3) have a kitchen that meets the requirements in §554.354(g)(1) of this subchapter (relating to Architectural Space Planning and Utilization for New Facilities) or a food service area that meets the requirements of an auxiliary serving kitchen in §554.354(g)(3) of this subchapter, exclusively within and for the house or household.

(f) A small house or household facility must be:

(1) a single small house model, which is a single licensed building having no more than 16 residents that meets the licensing requirements for architectural spaces provided within the same licensed building;

(2) a multiple small house model, which is a single licensed group of two or more small houses located in close proximity to each other on a single contiguous property that meets the licensing requirements for architectural spaces in each house and that may include a stand-alone central building that provides social-diversional space, a treatment area, or an administrative area; or

(3) a household model, which is a single licensed building that contains one or more households having no more than 16 residents each; that may include a central area that provides social-diversional space, a treatment area, or an administrative area; and that must be arranged to avoid travel through the household by persons who are not residing in, visiting, or providing services for the household.

(g) A small house or household facility must comply with the requirements in this section and is not required to request a waiver for an exception described in this subsection.

(1) The outdoor activity, recreational, and sitting spaces required in §554.352(f) of this subchapter (relating to Location and Site for New Facilities) must include a porch area under a roof with suitable furniture for sitting and space for wheelchairs.

(2) The resident bedroom requirements in §554.354(a) of this subchapter must be met, except:

(A) a bedroom must be occupied:

(i) by only one resident; or

(ii) by two residents, if they are members of the same family and the bedroom size, furniture, and headboard wall requirements for double occupancy are met;

(B) the toilet requirements in §554.354(a)(7) of this subchapter must be met, except a bathroom must serve no more than one resident room and must include a lavatory, toilet, and a shower or bathing unit;

(C) the night lighting requirement in §554.354(a)(5) of this subchapter must be met, except it must be a recessed wall mounted fixture just inside the entry door to the room and must not be obstructed by the door or furniture; and

(D) the electrical receptacle requirements in §554.354(a)(6) of this subchapter must be met and additional receptacles must be provided to meet the requirements for Dwelling Unit Receptacle Outlets in NFPA 70.

(3) The nursing service area requirements in §554.354(b) of this subchapter must be met, except:

(A) a nursing staff lounge is not required in a small house facility;

(B) the nursing staff toilet room may also be a toilet room for:

(i) kitchen staff;

(ii) the public; or

(iii) a general bathing room, if the toilet room opens into the general bathing room and common areas; and

(C) the nourishment station may be part of the residential kitchen area.

(4) Resident bathing and toilet facility requirements in §554.354(c) of this subchapter must be met, except the door between a bathroom and a resident bedroom:

(A) is not required to be a side-hinged swinging door;

(B) may be an externally mounted by-pass door;

(C) must have substantial hardware;

(D) must not be equipped with a bottom door track that is a tripping hazard; and

(E) if it swings open into the bedroom, must not interfere with the swing of any other door that opens into the bedroom.

(5) The living area requirements in §554.354(e) of this subchapter and dining room requirements in §554.354(f) of this subchapter must be met, except the distance between the floor and the window sill of a window in the living or dining room must not exceed 36 inches, to allow a view to the outside from a seated position.

(6) The dietary facility requirements in §554.354(g) of this subchapter must be met, except a kitchen serving 16 or fewer non-employees per meal:

(A) may be open to the facility in compliance with NFPA 101;

(B) must meet the general food service needs of the residents;

(C) must provide for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal;

(D) must contain a multi-compartment sink, vegetable sink, and hand washing sink;

(E) must provide a supply of hot water that, if used for sanitizing purposes is 180 degrees Fahrenheit or at the manufacturer's suggested temperature for chemical sanitizers;

(F) must provide a supply of cold water;

(G) must have janitorial facilities exclusively for the kitchen and located in close proximity to the kitchen;

(H) must have kitchen floors, walls, and ceilings with nonabsorbent smooth finishes or surfaces that are capable of being routinely cleaned and sanitized to maintain a healthful environment;

(I) must have counter and cabinet surfaces, inside and outside, with smooth, cleanable, relatively nonporous finishes; and

(J) must have a toilet for the kitchen staff that is in close proximity to the kitchen and that may also be a toilet room for the public or the general bathing room.

(7) The exit requirements in §554.355(3) of this subchapter (relating to Exit Provisions for New Facilities) must be met except for fixed furniture and wheeled equipment as permitted by NFPA 101.

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

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DIVISION 9. FACILITIES LICENSED ON OR AFTER APRIL 2, 2018

26 TAC §554.361

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.361. Electrical Requirements for New Facilities.

(a) The design of the electrical systems must be done by or under the direction of a licensed professional electrical engineer approved by the Texas Board of Professional Engineers and Land Surveyors to operate in Texas, and the parts of the plans and specifications covering electrical design must bear the legible seal of the engineer.

(1) Utilities; heating, ventilating, and air-conditioning systems; vertical conveyors; and chutes must meet the requirements of NFPA 101, Chapter 9, Building Service and Fire Protection Equipment.

(2) Fire protection systems, including fire alarms, must meet the requirements of §554.357 of this division (relating to Fire Protection Systems for New Facilities).

(3) Lighting and outlets at resident bedrooms must meet the requirements of §554.354 of this division (relating to Architectural Space Planning and Utilization for New Facilities).

(b) Electrical systems.

(1) Electrical systems must meet the installation requirements of NFPA 70.

(2) Electrical systems must meet the performance requirements of NFPA 99.

(3) Branch circuits serving resident bedrooms must meet the requirements of NFPA 99.

(4) Essential Electrical System (EES).

(A) To provide electricity during an interruption of the normal electric supply, an emergency source of electricity must be provided and connected to certain circuits for lighting and power. All facilities covered by this section must comply with the EES requirements for new health care facilities in NFPA 99, based on the risk category determined by the assessment required by §554.300(i) of this subchapter (relating to General Requirements).

(i) If the determined risk category is Category 2, as defined in NFPA 99, the EES must meet the requirements for a Type II EES according to NFPA 99.

(ii) If the determined risk category is Category 1, as defined in NFPA 99, the EES must meet the requirements for a Type I EES according to NFPA 99.

(iii) A Type I EES serving a portion of a facility categorized as Category 1 risk is permitted to also serve a portion of the same facility categorized as Category 2 risk.

(iv) Distribution requirements for Type I or Type II EES must be according to NFPA 99.

(B) In addition to systems and devices required for the type of EES installed, the following systems and devices must be connected to the appropriate branches of the EES, according to NFPA 99:

(i) illumination for the following areas:

(I) means of egress, including areas immediately outside of exit doors;

(II) nurses' stations;

(III) medication rooms;

(IV) dining, living, and recreation rooms, including activity rooms;

(V) bathing rooms not directly connected to resident bedrooms;

(ii) exit signs and exit directional signs as required by NFPA 101;

(iii) alarm systems, including fire alarms and alarms required for nonflammable medical gas systems, if installed;

(iv) task illumination and selected receptacles at the generator set location;

(v) selected duplex receptacles including receptacles in such areas in resident corridors, at each resident bed location, in nurses' stations, and in medication rooms, including biologicals refrigerator;

(vi) nurse call systems;

(vii) resident room night lights;

(viii) a light and receptacle in an electrical room or a boiler room;

(ix) elevator cab lighting, control, and communication systems;

(x) all facility telephone equipment;

(xi) paging or speaker systems, if intended for communication during an emergency. Radio transceivers installed for emergency use must be capable of operating for at least one hour upon total failure of both normal and emergency power.

(xii) Heating Equipment to Provide Heating for Resident Bedrooms. A facility must provide heating in resident bedrooms during disruption of the normal power source unless one of the following conditions applies:

(I) The outside design temperature is higher than 20 degrees Fahrenheit (-6.7 degrees Celsius);

(II) The outside design temperature is lower than 20 degrees Fahrenheit (-6.7 degrees Celsius) and, when selected rooms are provided for the needs of all residents, then only such rooms need be heated.

(III) The facility is served by a dual source of normal power.

(xiii) A facility must provide throw-over facilities to allow the temporary operation of any elevator for the release of passengers in instances when an interruption of power would result in elevators stopping between floors.

(C) The emergency lighting must be automatically in operation within ten seconds after the interruption of the normal power supply. Emergency egress lighting must not be switched.

(D) Receptacles and switches connected to emergency power must have red faceplates.

(E) The design and installation of emergency motor generators must be according to NFPA 37, NFPA 99, and NFPA 110.

(i) Nursing facilities and contiguous or same-site facilities, such as hospitals and assisted living facilities, may be served by the same generating equipment so long as the integrity of the individual facilities' emergency or back-up power systems is not compromised. This permission applies only to the generating equipment and not to automatic or manual transfer switches or to distribution systems.

(ii) Generators must be located a minimum of three feet from a combustible exterior building finish and a minimum of five feet from a building opening, if located on the exterior of the building.

(iii) A facility must provide a noncombustible protective cover or the protection recommended by the manufacturer when a generator is located on the exterior of the building.

(iv) Stored fuel capacity must be sufficient for not less than four hours of required generator operation.

(v) Motor generators fueled by public utility natural gas must have the capability to be switched to an alternate fuel source according to NFPA 70.

(F) The wiring circuits for the EES must be kept entirely independent of all other wiring and must not enter the same race-ways, boxes, or cabinets according to NFPA 70.

(G) A facility must meet the requirements for the administration of the EES, including maintenance and testing of the EES, according to the requirements of NFPA 99 for the type of EES installed, and the requirements of §554.326(d) of this subchapter (relating to Safety Operations).

(5) General Lighting Requirements. General lighting requirements are as follows:

(A) All spaces occupied by people, machinery, equipment, approaches to buildings, and parking lots must have lighting.

(B) All quality, intensity, and type of lighting must be adequate and appropriate to the space and all functions within the space.

(C) Minimum lighting levels can be found in the Illuminating Engineering Society Lighting Handbook, latest edition, but must not be lower than the following.

(i) Minimum illumination must be 20 footcandles in resident rooms, corridors, nurses' stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways, and elevators. Illumination requirements for these areas apply to lighting throughout the space and are measured at approximately 30 inches above the floor anywhere in the room.

(ii) Minimum illumination for over-bed reading lamps, medication-preparation or storage area, kitchens, and nurses' station desks must be 50 footcandles. Illumination requirements for these areas apply to the task performed and are measured on the task.

(D) A facility must provide general illumination, with provisions for reduction of light levels at night, in a nursing unit corridor.

(E) A facility must provide a basket wire guard or other suitable shield to prevent breakage or contact between combustible materials and exposed incandescent light bulbs, or other high-heat generating lamps, in closets or other similar spaces.

(F) Exposed incandescent or fluorescent bulbs are not permitted in food service or other areas where glass fragments from breakage may get into food, medications, linens, or utensils. A facility must protect all fluorescent bulbs with a shield or catcher to prevent bulb drop-out.

(6) Receptacles or convenience outlets.

(A) Receptacles in bedrooms must meet the requirements in §554.354(a)(6) of this division (relating to Architectural Space Planning and Utilization for New Facilities).

(B) Duplex receptacles for general use must be installed in corridors spaced not more than 50 feet apart and within 25 feet of ends of corridors. A facility must provide at least one duplex receptacle with emergency electrical service in each resident corridor.

(C) Receptacles must be provided with emergency electrical service for essential needs such as medication refrigerators and systems or equipment whose failure is likely to result in major injury or death to a resident.

(D) Receptacles in the remainder of the building must be sufficient to serve the present and future needs of residents and equipment.

(E) Location of receptacles, horizontally and vertically, should be carefully planned and coordinated with the expected designed use of furnishings and equipment to maximize their accessibility and to minimize conditions such as beds or furniture being jammed against plugs used in the outlets.

(F) Exterior receptacles must be an approved waterproof type.

(G) A facility must provide ground fault interruption protection at appropriate locations such as at whirlpools and other wet areas according to the NFPA 70.

(c) Nurse call systems.

(1) A nurse call system consists of power units, annunciator control units, corridor dome stations, emergency call stations, bedside call stations, and activating devices. The units must be compatible and laboratory listed by a nationally recognized testing laboratory for the system and use intended.

(2) Each resident bedroom must be served by at least one call station and each bed must be provided with a call switch. Two call switches serving adjacent beds may be served by one call station. Each call entered into the system must activate a corridor dome light above the bedroom, bathroom, or toilet room corridor door, a visual signal at the nurses' station which indicates the room from which the call was placed, and a continuous or intermittent continuous audible signal of sufficient amplitude to be clearly heard by nursing staff. The amplitude or pitch of the audible signal must not be such that it is irritating to residents or visitors. The system must be designed so that calls entered into the system may be canceled only at the call station. Intercom-type systems which meet this requirement are acceptable.

(3) A nurse call system that provides two-way voice communication must be equipped with an indicating light at each call station which lights and remains lighted as long as the voice circuit is operating.

(4) A nurse call emergency switch must be provided for resident use at each resident's toilet, bath, and shower. These switches must be usable by residents using the fixtures and by a collapsed resident lying on the floor.

(5) A nurse call system must meet UL 1069 for the core system of power units, annunciator control units, corridor dome lights, emergency call stations, bedside call stations, and activating devices; and

(6) An ancillary or supplemental device, including a pocket pager or other portable device, is not required to meet UL 1069.

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

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SUBCHAPTER K. NURSING SERVICES

26 TAC §554.1001

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.1001. Nursing Services.

(a) The facility must have sufficient staff with the appropriate competencies and skill sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. This is determined by resident assessments and individual comprehensive care plans and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §554.1931 of this chapter (relating to Facility Assessment). Staff who have been instructed and who have demonstrated competence in the care of children must provide nursing services to children. Care and services are to be provided as specified in §554.901 of this chapter (relating to Quality of Care).

(1) Sufficient staff.

(A) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) licensed nurses, except when waived under paragraph (5) of this subsection; and

(ii) other nursing personnel, including nurse aides.

(B) The facility must designate a licensed nurse to serve as a charge nurse on each shift, except when waived under paragraph (5) of this subsection.

(C) The facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for a resident's needs, as identified through resident assessments, and described in the comprehensive care plan.

(D) The facility must provide care that includes assessing, evaluating, planning, and implementing resident comprehensive care plans and responding to a resident's needs.

(2) Registered nurse.

(A) The facility must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week, except when waived under paragraph (5) or (6) of this subsection.

(B) The facility must designate a registered nurse to serve as the director of nursing on a full-time basis, 40 hours per week, except when waived under paragraph (6) of this subsection.

(C) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(3) Proficiency of nurse aides. The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for a resident's needs, as identified through resident assessments, and described in the resident's comprehensive care plan.

(4) Requirements for facility hiring and use of nurse aides.

(A) General rule. A facility must not use any individual working in the facility as a nurse aide for more than four months, on a full-time basis, unless:

(i) the individual is competent to provide nursing and nursing related services; and

(ii) the individual:

(I) has completed a training and competency evaluation program, or a competency evaluation program approved by the state as meeting the requirements of 42 CFR §§483.151-483.154; or

(II) has been deemed or determined competent as provided in 42 CFR §483.150(a) and (b).

(B) Nonpermanent employees. A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in subparagraphs (4)(A)(i) and (ii) of this paragraph.

(C) Competency. A facility must not use any individual who has worked less than four months as a nurse aide in that facility unless the individual:

(i) is a full-time employee in a state-approved training and competency evaluation program;

(ii) has demonstrated competence through satisfactory participation in a state-approved nurse aide training and competency evaluation program, or competency evaluation program; or

(iii) has been deemed or determined competent as provided in 42 CFR §483.150(a) and (b).

(D) Registry Verification. Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements and is not designated in the registry as having a finding concerning abuse, neglect or mistreatment of a resident, or misappropriation of a resident's property, unless:

(i) the individual is a full-time employee in a training and competency evaluation program approved by the state; or

(ii) the individual can prove that the individual has recently successfully completed a training and competency evaluation program, or competency evaluation program approved by the state and has not yet been included in the registry. A facility must follow up to ensure that such an individual actually becomes registered.

(E) Multi-state registry verification. Before allowing an individual to serve as a nurse aide, a facility must seek information from every state registry, established under §1819(e)(2)(A) or §1919(e)(2)(A) of the Social Security Act (42 U.S.C. §1395i-3(e)(2)(A); 42 U.S.C. §1396r(e)(2)(A)), that the facility believes will include information about the individual.

(F) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(G) Regular in-service education. The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must:

(i) be sufficient to ensure the continuing competence of a nurse aide, but must be no less than 12 hours per year;

(ii) include at least two hours of training on infection control and personal protective equipment per year;

(iii) address areas of weakness as determined in nurse aides' performance reviews and facility assessment at §554.1931 of this chapter, and may address the special needs of a resident as determined by the facility staff;

(iv) for a nurse aide providing services to an individual with cognitive impairments, address the care of the cognitively impaired; and

(v) include dementia management training and resident abuse prevention training.

(H) The facility must comply with the nurse aide training and registry rules found in Chapter 556 of this title (relating to Nurse Aides).

(5) Waiver of requirement to provide licensed nurses on a 24-hour basis.

(A) To the extent that a facility is unable to meet the requirements of paragraphs (1)(B) and (2)(A) of this subsection, the state may waive these requirements with respect to the facility, if:

(i) the facility demonstrates to the satisfaction of HHSC that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(ii) HHSC determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(iii) the state finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility; and

(iv) the waivered facility has a full-time registered or licensed vocational nurse on the day shift seven days a week. For purposes of this requirement, the starting time for the day shift must be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that it follows.

(B) A waiver granted under the conditions listed in this paragraph is subject to annual state review.

(C) In granting or renewing a waiver, a facility may be required by the state to use other qualified, licensed personnel.

(D) The state agency granting a waiver of these requirements provides notice of the waiver to the State Ombudsman and the protection and advocacy systems in the state for individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act (42 USC Chapter 114, Subchapter I) and individuals with intellectual or developmental disabilities established under the Developmental Disabilities Assistance and Bill of Rights Act (42 USC Chapter 144, Subchapter I, Part C).

(E) The nursing facility that is granted a waiver by the state notifies residents of the facility and the resident representatives of the waiver.

(6) Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week in a Medicare skilled nursing facility (SNF).

(A) The secretary of the U.S. Department of Health and Human Services (secretary) may waive the requirement that a Medicare SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (2) of this subsection, if the secretary finds that:

(i) the facility is located in a rural area and the supply of Medicare SNF services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) the facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) the facility either has:

(I) only residents whose physicians have indicated (through physician's orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(II) made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(B) The secretary provides notice of the waiver to the State Ombudsman and the protection and advocacy systems in the state for individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act (42 USC Chapter 114, Subchapter I) and individuals with intellectual or developmental disabilities established under the Developmental Disabilities Assistance and Bill of Rights Act (42 USC Chapter 144, Subchapter I, Part C).

(C) The SNF that is granted a waiver notifies residents of the facility and the resident representatives of the waiver.

(D) A waiver of the registered nurse requirement under subparagraph (A) of this paragraph is subject to annual renewal by the secretary.

(7) Request for waiver concerning staffing levels. The facility must request a waiver through the local HHSC Regulatory Services Division, in writing, at any time the administrator determines that staffing will fall, or has fallen, below that required in paragraphs (1) and (2) of this subsection for a period of 30 days or more out of any 45 days.

(A) The following information must be included in the request:

(i) beginning date when facility was or is unable to meet staffing requirements;

(ii) type waiver requested (24-hour licensed nurse or seven-day-per-week R.N.);

(iii) projected number of hours per month staffing reduced for 24-hour licensed nurse waiver or seven-day-per-week R.N. waiver; and

(iv) staffing adjustments made due to inability to meet staffing requirements.

(B) Waivers for licensed-only or certified facilities will be granted by HHSC Regulatory Services Division staff. Waivers for a Medicare SNF receive final approval from the CMS.

(C) If a facility, after requesting a waiver, is later able to meet the staffing requirements of paragraphs (1) and (2) of this subsection, HHSC Regulatory Services Division staff must be notified, in writing, of the effective date that staffing meets requirements.

(D) Verification that the facility appropriately made a request and notification will be done at the time of survey.

(E) Amounts paid to Medicaid-certified facilities in the per diem payment to meet the staffing requirements of paragraphs (1) and (2) of this subsection may be adjusted if staffing requirements are not met.

(8) Duration of waiver. Approved waivers are valid throughout the facility licensure or certification period, unless approval is withdrawn. During the relicensure or recertification survey, the determination is made for approval or denial for the next facility licensure or certification period if a waiver continues to be necessary. The facility requests a redetermination for a waiver from HHSC Regulatory Services Division staff at the time the survey is scheduled. At other times if a request is made, HHSC staff may schedule a visit for waiver determination.

(9) Requirements for waiver approval. To be approved for a waiver, the nursing facility must meet all of the requirements stated in this subchapter and the requirements specified throughout this chapter. In some instances, the survey agency may require additional conditions or arrangements such as:

(A) an additional licensed vocational nurse on day-shift duty when the registered nurse is absent;

(B) modification of nursing services operations; and

(C) modification of the physical environment relating to nursing services.

(10) Denial or withdrawal of a waiver. Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

(A) requirements for a waiver are not met on a continuing basis;

(B) the quality of resident care is not acceptable; or

(C) justified complaints are found in areas affecting resident care.

(11) Requirement that SNFs be in a rural area. A SNF (Medicare) must be in a rural area for waiver consideration, as specified in paragraph (6) of this subsection. A rural area is any area outside the boundaries of a standard metropolitan statistical area. Rural areas are defined and designated by the federal Office of Management and Budget; are determined by population, economic, and social requirements; and are subject to revisions.

(b) Nurse staffing information.

(1) Data requirements. The facility must post the following information:

(A) on a daily basis:

(i) the facility name;

(ii) the current date;

(iii) the resident census; and

(iv) the specific shifts for the day; and

(B) at the beginning of each shift, the total number of hours and actual time of day to be worked by the following licensed and unlicensed nursing staff, including relief personnel directly responsible for resident care:

(i) RNs;

(ii) LVNs; and

(iii) CNAs.

(2) Posting requirements. The nursing facility must post the data described in paragraph (1) of this subsection:

(A) in a clear and readable format; and

(B) in a prominent place readily accessible to residents and visitors.

(3) Public access to posted nurse staffing data. The facility must, upon oral or written request, make copies of nurse staffing data available to the public for review at a cost not to exceed the community standard rate.

(4) Facility data retention requirements. The facility must maintain the posted daily nurse staffing data for the period of time specified by written facility policy or for at least two years following the last day in the schedule, whichever is longer.

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SUBCHAPTER M. PHYSICIAN SERVICES

26 TAC §554.1207

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.1207. Prescription of Psychoactive Medication.

(a) In this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) Medication-related emergency--A situation in which it is immediately necessary to administer medication to a resident to prevent:

(A) imminent probable death or substantial bodily harm (emotional or physical) to the resident; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.

(2) Psychoactive medication--A medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A) anti-psychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) anti-anxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

(1) the resident is having a medication-related emergency; or

(2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Consent to the prescription of psychoactive medication given by a resident, or by a person authorized by law to consent on behalf of the resident, is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the person who prescribes the medication, that person's designee, or the facility's medical director provides the resident and, if applicable, the person authorized by law to consent on behalf of the resident, with a form containing the following information identified as being for the purpose of consent to treatment with psychoactive medication:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable clinically significant side effects and risks associated with the medication, as reported in widely available pharmacy databases or the manufacturer's package insert; and

(D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident, are informed in writing that consent may be revoked;

(4) consent is given in writing by a resident or by a person authorized by law to consent on behalf of the resident, on a form prescribed by HHSC, if the prescription is for antipsychotics or neuroleptics; and

(5) the consent is evidenced in the resident's clinical record by:

(A) a signed form prescribed by the facility, or by a statement of the person who prescribes the medication or that person's designee that documents consent was given by the appropriate person and the circumstances under which the consent was obtained; and

(B) the original or a copy of the form described in paragraph (4) of this subsection.

(d) Consent is valid until:

(1) consent is withdrawn; or

(2) the practitioner has discontinued the medication.

(e) For purposes of this rule, a medication will be considered to be discontinued if therapy has been suspended for more than 70 days. If the suspended therapy is resumed within the 70-day period, an oral explanation of side effects should be documented in the clinical record.

(f) The Health and Safety Code, Chapter 313, Consent to Medical Treatment, provides guidance on treatment decisions when a resident is comatose, incapacitated, or otherwise mentally or physically incapable of communication. An ethics committee also may prove helpful in such situations.

(g) A resident's refusal to consent to receive psychoactive medication must be documented in the resident's clinical record.

(h) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person must document the necessity of the order in the resident's clinical record in specific medical or behavioral terms; and

(2) treatment of the resident with the psychoactive medication must be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(i) A physician, or a person designated by the physician, is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under subsection (c)(2) of this section made by the resident, or the person authorized by law to consent on behalf of the resident, that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

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

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Karen Ray
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SUBCHAPTER Q. INFECTION CONTROL

26 TAC §554.1601

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

§554.1601. Infection Control.

(a) General. The facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections.

(b) Infection prevention and control program (IPCP). The facility must establish an IPCP and conduct an annual review, effective November 28, 2019, of the IPCP and update the program, as necessary. The Quality Assessment and Assurance Committee, as described in §554.1917 of this chapter (relating to Quality Assessment and Assurance) monitors the IPCP. The IPCP must include:

(1) a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under a contractual arrangement based upon the facility assessment conducted according to §554.1931 of this chapter (relating to Facility Assessment), and following accepted national standards;

(2) written standards, policies, and procedures for the program, which must include:

(A) a system of surveillance designed to identify possible communicable diseases or infections, including multidrug-resistant organisms, before they can spread to other persons in the facility;

(B) when and to whom possible incidents of communicable diseases or infections should be reported;

(C) standard and transmission-based precautions to be followed to prevent spread of infections;

(D) when and how isolation should be used for a resident; including:

(i) the type and duration of the isolation, depending upon the infectious agent or organism involved; and

(ii) a requirement that the isolation should be the least restrictive possible for the resident under the circumstances;

(E) the circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with a resident or a resident's food, if direct contact will transmit the disease; and

(F) the hand hygiene procedures to be followed by staff involved in direct resident contact;

(3) an antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use;

(4) procedures for making rapid influenza diagnostic tests available to facility residents;

(5) a system for recording incidents identified under the facility's IPCP and the corrective actions taken by the facility; and

(6) acceptable accommodations for a resident with a communicable disease according to current practices and policies for infection control.

(c) Infection preventionist. Effective November 28, 2019, the facility must designate one or more individuals as the infection preventionist (IP) who is responsible for the facility's IPCP. The individual designated as the IP, or at least one of the individuals if there is more than one IP, must be a member of the facility's Quality Assessment and Assurance Committee and report to the committee on the IPCP on a regular basis. The IP must:

(1) have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field;

(2) be qualified by education, training, experience or certification;

(3) work at least part-time at the facility; and

(4) have completed specialized training in infection prevention and control.

(d) Communicable Diseases.

(1) Policies. The facility must have and implement written policies for the control of communicable diseases in employees and residents and must maintain evidence of compliance with local and state health codes and ordinances regarding employee and resident health status.

(2) Reporting. The name of any resident with a reportable disease as specified in Title 25, Chapter 97, Subchapter A (relating to Control of Communicable Diseases), must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(3) Tuberculosis.

(A) The facility must conduct and document an annual review that assesses the facility's current risk classification according to the current CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings.

(B) The facility must screen all employees before providing services in the facility, according to CDC guidelines. The facility must require all persons providing services under an outside resource contract to provide evidence of a current tuberculosis screening prior to providing services in the facility. The facility must document or keep a copy of the evidence provided.

(C) If the facility determines or suspects that an employee or person providing services under an outside resource contract has been exposed to or has a positive screening for a communicable disease, the facility must respond according to the current CDC guidelines and keep documentation of the action taken.

(D) If the facility determines that an employee or a person providing services under an outside resource contract has been exposed to a communicable disease, the facility must conduct and document a reassessment of the risk classification. The facility must conduct and document subsequent screening based upon the reassessed risk classification.

(E) The facility must screen all residents at admission in accordance with the attending physician's recommendations and current CDC guidelines. If the facility determines or suspects that a resident has been exposed to a communicable disease or has a positive screening, the facility must respond according to the current CDC guidelines and attending physician's recommendations, and keep documentation of the response.

(e) Vaccinations.

(1) A facility must develop and implement a written policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(A) The policy must:

(i) require an employee, contractor, or other individual with privileges providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee, contractor, or other individual presents to residents by the employee's, contractor's, or other individual's routine and direct exposure to residents;

(ii) specify the vaccines an employee, contractor, or other individual with privileges to provide direct resident care is required to receive in accordance with clause (i) of this subparagraph;

(iii) include procedures for the facility to verify that an employee, contractor, or other individual with privileges to provide direct resident care has complied with the policy;

(iv) include procedures for the facility to exempt an employee, contractor, or other individual with privileges to provide direct resident care from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC;

(v) for an employee, contractor, or other individual with privileges to provide direct resident care who is exempt from the required vaccines, include procedures the employee, contractor, or other individual must follow to protect residents from exposure to vaccine preventable diseases, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee, contractor, or other individual presents to residents by the employee's, contractor's, or other individual's routine and direct exposure to residents;

(vi) prohibit discrimination or retaliatory action against an employee, contractor, or other individual with privileges to provide direct resident care who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(vii) require the facility to maintain a written or electronic record of each employee's, contractor's, or other individual's compliance with or exemption from the policy; and

(viii) include disciplinary actions the facility may take against an employee, contractor, or other individual with privileges to provide direct resident care who fails to comply with the policy.

(B) The policy may:

(i) include procedures for an employee, contractor, or other individual with privileges to provide direct resident care to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(ii) prohibit an employee, contractor, or other individual with privileges to provide direct resident care who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Definitions).

(2) A facility must offer vaccinations to a resident in accordance with an immunization schedule adopted by the Advisory Committee on Immunization Practices of the CDC.

(A) Pneumococcal vaccinations for residents. The facility must offer pneumococcal vaccination to a resident 65 years of age or older who has not received the vaccination and to a resident younger than 65 years of age, who has not received the vaccination but is a candidate for it because of chronic illness. A pneumococcal vaccination must be offered to a current resident of a facility and to a new resident at the time of admission. A vaccination must be completed unless a physician has indicated that the vaccination is medically contraindicated or the resident refuses the vaccination. The facility must develop and implement policies and procedures to ensure that:

(i) before offering the pneumococcal immunization, each resident or resident representative receives education regarding the benefits and potential side effects of the pneumococcal vaccination;

(ii) each resident is offered a pneumococcal immunization, unless the immunization is medically contraindicated or the resident has already been immunized;

(iii) the resident or the resident representative has the opportunity to refuse immunization; and

(iv) the resident's clinical record includes documentation that indicates:

(I) that the resident or the resident representative was provided education regarding the benefits and potential side effects of pneumococcal immunization;

(II) that the resident either received the pneumococcal immunization or did not receive the pneumococcal immunization due to medical contraindication or refusal; and

(III) the date of the receipt or refusal of the pneumococcal vaccination.

(v) Based on an assessment and practitioner recommendation, a second pneumococcal vaccination may be given five years after the first pneumococcal vaccination, unless medically contraindicated or the resident or the resident representative refuses the second vaccination.

(B) Influenza vaccinations for residents and employees. The facility must offer an influenza vaccination to a resident and an employee in contact with residents, unless the vaccination is medically contraindicated by a physician or the employee or resident has refused the vaccination.

(i) Influenza vaccinations for all residents and employees in contact with a resident must be completed by November 30 of each year. Employees hired or residents admitted after this date and during the influenza season (through March of each year) must receive influenza vaccinations, unless medically contraindicated by a physician or the employee, the resident, or the resident representative refuses the vaccination.

(ii) The facility must develop and implement policies and procedures that ensure that:

(I) before offering the influenza immunization, each resident or resident representative receives education regarding the benefits and potential side effects of the influenza vaccination; and

(II) the resident's clinical record includes documentation that indicates:

(-a-) that the resident or the resident representative was provided education regarding the benefits and potential side effects of influenza immunization;

(-b-) that the resident either received the influenza immunization or did not receive the influenza immunization due to medical contraindications or refusal; and

(-c-) the date of the receipt or refusal of the annual influenza vaccination.

(C) Hepatitis B vaccinations for employees. The facility must develop a method to identify employees at risk of directly contacting blood or potentially infectious materials. The facility must offer an employee identified as being at risk of directly contacting blood or potentially infectious materials a hepatitis B vaccine within 10 days of employment. If the employee initially declines the hepatitis B vaccination but at a later date, while still at risk of directly contacting blood or potentially infectious materials, decides to accept the vaccination, the facility must make the vaccination available within 10 days after the employee decides to accept that vaccination.

(f) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection and in accordance with §554.325 of this chapter (relating to Linen).

(g) The Quality Assessment and Assurance Committee as described in §554.1917 of this chapter (relating to Quality Assessment and Assurance) will monitor the Infection Prevention and Control Program.

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

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CHAPTER 556. NURSE AIDES

26 TAC §556.100

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 556, Nurse Aides, new §556.100, concerning Nurse Aide Transition from Temporary Status.

New §556.100 is adopted without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5738). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

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

Under this waiver, nursing facilities have employed and trained numerous staff to complete nurse aide tasks who are not certified nurse aides. Once this waiver is no longer available, either through the termination of the emergency declaration or through other means, the staff completing these tasks will no longer be able to do so unless they have become certified as nurse aides. To ensure continued staffing at nursing facilities, a transition plan needs to be in place.

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

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

To provide a path for certification of nurse aides who have been working in nursing facilities under the waiver of training requirements during the COVID-19 public health emergency, HHSC adopted a new emergency rule on May 19, 2021, which was extended on September 16, 2021. This emergency rule allowed time trained and time worked in a nursing facility during the COVID-19 public health emergency to be counted as classroom and clinical hours required as part of a NATCEP. The purpose of the adopted new section is to ensure continued staffing at nursing facilities by adopting into permanent rule the process established under the May 19, 2021, emergency rule.

COMMENTS

The 31-day comment period ended October 22, 2021. During this period, HHSC did not receive any comments regarding the proposed rule.

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 of and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

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

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CHAPTER 557. MEDICATION AIDES--PROGRAM REQUIREMENTS

26 TAC §§557.101, 557.107, 557.109, 557.113, 557.115, 557.119, 557.121, 557.123, 557.128, 557.129

The Texas Health and Human Services Commission (HHSC) adopts amendments to Texas Administrative Code (TAC), Title 26, Part 1, Chapter 557, Medication Aides--Program Requirements, amendments to §557.101, concerning Introduction; §557.107, concerning Training Requirements; Nursing Graduates; Reciprocity; §557.109, concerning Application Procedures; §557.113, concerning Determination of Eligibility; §557.115, concerning Permit Renewal; §557.119, concerning Training Program Requirements; §557.121, concerning Permitting of Persons with Criminal Backgrounds; §557.123, concerning Violations, Complaints, and Disciplinary Actions; §557.128, concerning Home Health Medication Aides; and §557.129, concerning Alternate Licensing Requirements for Military Services.

The amendments to §§557.101, 557.107, 557.109, 557.113, 557.115, 557.119, 557.121, 557.128, and 557.129 are adopted without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5740). These rules will not be republished. Section 557.123 is adopted with non-substantive changes and will be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendments are necessary to comply with the implementation of House Bill (H.B.) 1342 and Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019; and H.B. 139, 87th Legislature, Regular Session, 2021. H.B. 1342 eliminates certain grounds for disqualification for an occupational license

based on prior criminal convictions that are unrelated to the duties and responsibilities of an occupational license. S.B. 1200 allows for military spouses who have occupational licensing from other states to engage in that occupation without obtaining an additional license by notifying the applicable state agency. H.B. 139 clarifies S.B. 1200 to include the Space Force as a branch of military and that a permanent change of station order may be used to establish Texas residency.

The adopted amendments require medication aides to submit fingerprints to the Texas Department of Public Safety for a criminal background check and clarify the utilization of online courses in medication aide training programs.

The adopted amendments also update rule references that became outdated as a result of the administrative transfer of rules in 40 TAC Chapter 19 to 26 TAC Chapter 554, update terminology, and remove outdated references for clarity and consistency.

COMMENTS

The 31-day comment period ended October 11, 2021.

HHSC did not receive any comments regarding the proposed rules during this period.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

§557.123. Violations, Complaints, and Disciplinary Actions.

(a) Filing of complaints. Any person may complain to HHSC alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter.

(1) Persons who want to file a complaint against a medication aide, training program, or another person, must notify HHSC by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Health and Human Services Commission, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by HHSC if the complainant provides sufficient information.

(b) Investigation of complaints. If HHSC initial investigation determines:

(1) the complaint does not come within HHSC jurisdiction, HHSC advises the complainant and, if possible, refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, HHSC dismisses the complaint and gives written notice of the dismissal to the medication aide or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, HHSC may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. HHSC may revoke, suspend, or refuse to renew a permit, or reprimand a medication aide for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. HHSC may suspend a permit in an emergency or rescind HHSC approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter.

(1) HHSC may place on probation a person whose permit is suspended. HHSC may require the person on probation:

(A) to report regularly to HHSC on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by HHSC; or

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to HHSC in those areas that are the basis of the probation.

(2) Before institution of formal proceedings to revoke or suspend a permit or rescind program approval, HHSC gives written notice to the medication aide or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, HHSC complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, HHSC gives written notice that the medication aide or program must request, in writing, a hearing within 30 days after receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); and 40 TAC Chapter 91 (relating to Hearings under the Administrative Procedure Act).

(5) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 556 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 556, HHSC complies with the hearing process described in paragraph (4) of this subsection. Through the hearing, determinations will be made on both the permit for medication aide practice and the certification for nurse aide practice.

(d) Denial based on criminal history.

(1) HHSC provides written notice to any person HHSC proposes to deny an application based on the person's criminal history. The written notice must contain, as applicable:

(A) a statement that the person is disqualified from receiving a permit or being examined for a permit because of the person's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) and (b) of this chapter (relating to Permitting of Persons with a Criminal Background); or

(B) a statement that:

(i) HHSC's decision to deny the person a permit, or the opportunity to be examined for a permit, will be based on the factors listed in §557.121(b) of this chapter, as provided in §557.121(a) of this chapter; and

(ii) the person has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in §557.121(c) of this chapter within 30 days of receipt of the notice.

(2) If, upon reviewing the evidence provided by the person, HHSC upholds its decision to deny the person, HHSC shall notify the person in writing of:

(A) the reason for the denial or disqualification, including any factors considered under §557.121(a) and (b) of this chapter that served as the basis for denial or disqualification; and

(B) the process for requesting a formal hearing before a State Office of Administrative Hearings administrative law judge.

(3) If HHSC's decision to deny the person is upheld during a formal hearing, HHSC shall notify the person in writing of:

(A) the process for requesting a motion for rehearing to appeal the decision; and

(B) if the decision is upheld upon a motion for rehearing, the process for requesting judicial review.

(e) Suspension or Revocation based on criminal history.

(1) HHSC provides written notice to a permit holder that HHSC proposes to suspend or revoke the permit holder's permit. The written notice must contain, as applicable:

(A) a statement that the permit holder is no longer eligible to have the permit because of the permit holder's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) and (b) of this chapter; or

(B) a statement:

(i) that HHSC's decision to suspend or revoke the permit holder's permit will be based on the factors listed in §557.121(c) of this chapter, as provided in §557.121(a) of this chapter; and

(ii) describing the process for the permit holder to request an informal reconsideration opportunity by HHSC.

(2) If, after conducting the informal reconsideration, HHSC upholds its decision to suspend or revoke the permit holder's permit, HHSC shall notify the permit holder in writing of:

(A) the reason for the suspension or revocation including any factors considered under §557.121(a) and (b) of this chapter that served as the basis for suspension or revocation; and

(B) the process for requesting a formal hearing before a State Office of Administrative Hearings administrative law judge.

(3) If HHSC's decision to suspend or revoke the permit holder's permit is upheld during a formal hearing, HHSC shall notify the permit holder in writing of:

(A) the process for requesting a motion for rehearing to appeal the decision; and

(B) if the decision is upheld upon a motion for rehearing, the process for requesting judicial review.

(f) Suspension, revocation, or nonrenewal. If HHSC suspends a permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists or HHSC revokes or determines not to renew the permit. HHSC investigates before making a determination and:

(1) during the time of suspension, the suspended medication aide must return his or her permit to HHSC;

(2) if a suspension overlaps a permit renewal date, the suspended medication aide may comply with the renewal procedures in §557.115 of this chapter (relating to Permit Renewal); however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists;

(3) if HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.

(g) Complaints of abuse and neglect by medication aides who are issued a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, and employed in a correctional facility, are investigated as described in §557.125(k) of this chapter (relating to Requirements for Corrections Medication Aides).

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

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

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Commissioner of Insurance adopts amended 28 TAC §3.9901, concerning the adoption of changes to the valuation manual for reserving and related requirements. The amendment is adopted without changes to the proposed text published in the November 5, 2021, issue of the *Texas Register* (46 TexReg 7553). The rule will not be republished.

REASONED JUSTIFICATION. Amended §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 Commissioner 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. Forty-eight jurisdictions, representing 87.27% of the relevant direct written premiums, voted in favor of adopting one additional amendment. Both votes adopting changes to the NAIC valuation manual meet the requirements of Insurance Code §425.073(c).

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.pdf. Effective January 1, 2022, the adopted manual can be viewed at the following website: content.naic.org/sites/default/files/pbr_data_valuation_manual_current_edition.pdf. The amendment to the section is described in the following paragraph.

Amended §3.9901. TDI has amended §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.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The Commissioner adopts amended 28 TAC §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.

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 December 8, 2021.

TRD-202104944
James Person
General Counsel
Texas Department of Insurance
Effective date: December 28, 2021
Proposal publication date: November 5, 2021
For further information, please call: (512) 676-6584

PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §§276.2, 276.7, 276.8

The Office of Injured Employee Counsel (OIEC) adopts the repeal of existing rules at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §§276.2, 276.7, and 276.8. The repeals eliminate language already found in the Texas Labor Code and in OIEC internal policies. The rules are not necessary and should be repealed. The repeals are adopted without changes to the proposed as published in the November 12, 2021, issue of the *Texas Register* (46 TegReg 7741). The rules will not be republished.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are redundant with Labor and Government Code provisions governing OIEC or have procedures not required under the statutes. Internal policies have been enacted to address the rule requirements. As a result, many of the rules are unnecessary.

The repeal of §276.2, The Mission of the Office of Injured Employee Counsel, eliminates language already found in Texas Labor Code §404.101, OIEC's website and numerous agency publications.

The repeal of §276.7, Agency's Ethics Statement and Employee Requirements, eliminates duplicative language already found in Government Code §572.051, OIEC policy, and interagency

agreements with the Texas Department of Insurance and the Division of Workers' Compensation.

The repeal of §276.8, Ethics Committee, eliminates duplicative language found in Government Code §572.051 and the OIEC Employee Manual.

SUMMARY OF COMMENTS. OIEC did not receive any comments on the proposed repeals.

STATUTORY AUTHORITY. The Public Counsel adopts the repeals to 28 TAC §§276.2, 276.7, and 276.8 as authorized under Labor Code §404.006 to adopt rules as necessary to implement Chapter 404 of the Labor Code.

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

Filed with the Office of the Secretary of State on December 13, 2021.

TRD-202105051
Gina McCauley
General Counsel
Office of Injured Employee Counsel
Effective date: January 2, 2022
Proposal publication date: November 12, 2021
For further information, please call: (512) 804-4194

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.13

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts new §41.13, relating to One-Time Reenrollment Opportunity, of Subchapter A, Chapter 41, in Title 34, Part 3, of the Texas Administrative Code without changes to the proposed text as originally published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7359). The rule will not be republished.

REASONED JUSTIFICATION

TRS adopts new §41.13 to administer and implement new §1575.161(b) and (c) of the Insurance Code, which was introduced by House Bill 2022, 87th Texas Legislature, Regular Session, 2021. New §1575.161(b) of the Insurance Code mandates that the Board of Trustees create rules to provide a one-time opportunity to reenroll in a health benefit plan offered under TRS-Care for an otherwise eligible retiree. New §1575.161(c) of the Insurance Code provides that §1575.161(b) and (c) expire September 1, 2024.

New §41.13 restates the eligibility requirements of new Subsection 1575.161(b) of the Insurance Code; defines "eligible to enroll in Medicare"; addresses dependents; provides reenrollment will take effect on the first day of the month following the month in which TRS receives the written request; and provides that the new rule will expire September 1, 2024 unless extended by legislative action.

COMMENTS

No comments on the proposed adoption of new rule were received.

STATUTORY AUTHORITY

New §41.13 is adopted under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Employees Group Benefits Program (TRS-CARE), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Section 2 of House Bill 2022, 87th Texas Legislature, Regular Session, 2021, which requires the Teacher Retirement System of Texas to adopt rules necessary to implement §1575.161(b), Insurance Code; and Chapter 825, Texas Government Code, which governs the administration of TRS, §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The adopted new §41.13 affects §1575.161, Insurance Code, concerning Enrollment Periods.

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 December 10, 2021.

TRD-202104993
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: December 30, 2021
Proposal publication date: October 29, 2021
For further information, please call: (512) 542-6292

CHAPTER 61. TERMS AND PHRASES

34 TAC §61.1

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 61, concerning Terms and Phrases, by amending §61.1 (Definitions), without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7194). The amendments were approved by the ERS Board of Trustees at its December 7, 2021, meeting. This section will not be republished.

Section 61.1 is amended in order to clarify the rule and its interaction with other rules and statutes and to enhance public understanding of the rule.

No comments were received on the proposed rule amendments.

The amendments are adopted under § 815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the

funds of the retirement system and regarding the transaction of other business of the Board.

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 December 7, 2021.

TRD-202104899
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Effective date: December 27, 2021
Proposal publication date: October 22, 2021
For further information, please call: (877) 275-4377

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §§63.1, 63.3 - 63.5, 63.7, 63.9, 63.13, 63.15, 63.17, 63.19

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code Chapter 63, concerning Board of Trustees, §63.1 (Duties of the Board of Trustees), §63.3 (Election of Trustees (Nomination Process)), §63.4 (Election of Trustees (Ballot)), §63.5 (Rulemaking Procedure), §63.7 (Public Comment to the Board of Trustees), §63.9 (Officers), §63.13 (Committees), §63.15 (Roberts Rules of Order), §63.17 (Advisory Committees), and §63.19 (Standard of Conduct for Financial Advisors and Service Providers) without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7194). The amendments were approved by the ERS Board of Trustees at its December 7, 2021 meeting. These sections will not be republished.

Sections 63.1, 63.3, 63.4, 63.5, 63.7, 63.9, 63.13, 63.15, 63.17, and 63.19 are amended in order to implement statutory requirements pursuant to HB 917 of the 87th Regular Legislative Session, to clarify the intent of the rules and their interaction with other rules and statutes, and to enhance public understanding.

No comments were received regarding the proposed amendments.

The amendments are adopted under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

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 December 7, 2021.

TRD-202104903
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Effective date: December 27, 2021
Proposal publication date: October 22, 2021
For further information, please call: (877) 275-4377

CHAPTER 65. EXECUTIVE DIRECTOR

34 TAC §§65.1, 65.5, 65.7, 65.9, 65.11, 65.13

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 65, concerning Executive Director, by amending §65.1 (Duties of the Executive Director), §65.5 (Correction of Administrative Error), §65.7 (Appointment of Examiner), §65.9 (Delegation of Authority), §65.11 (Reimbursement for Training or Education), and §65.13 (Enhanced Contract Monitoring) without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7197). The amendments were approved by the ERS Board of Trustees at its December 7, 2021, meeting. These sections will not be republished.

Sections 65.1, 65.5, 65.7, 65.9, 65.11, and 65.13 are amended in order to clarify the intent of the rules and their interaction with other rules and statutes and enhance public understanding.

No comments were received on the proposed rule amendments.

The amendments are adopted under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

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 December 7, 2021.

TRD-202104901
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Effective date: December 27, 2021
Proposal publication date: October 22, 2021
For further information, please call: (877) 275-4377

CHAPTER 69. MEMBERSHIP, ANNUITY TERMINATION, AND REFUNDS

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 69, concerning Membership, Annuity Termination, and Refunds (f/k/a Membership and Refunds), by repealing §69.3 (Members of Governing Boards), §69.5 (Interest Payable at Time of Refund), and §69.7 (Reinstatement of Refunded Accounts within 15 days); adding the following new rules concerning the same or similar subject matter: §69.2 (Definitions Related to Annuity Termination), §69.3 (Termination of Annuities), §69.4 (Pre-Existing Qualified Domestic Relations Orders), §69.5 (Awards

to Spouses), §69.6 (Notice of Conviction), §69.7(Members of Governing Boards and Commissions), and §69.8 (Reinstatement of Refunded Accounts within 30 Days); and amending existing §69.1 (Employees Covered by Teacher Retirement System), and §69.9 (Trustee to Trustee Transfers). Section 69.3 is adopted with changes to the proposed text as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7360) and will be republished. Sections 69.1, 69.2, and 69.4 - 69.9 are adopted without changes and will not be republished. The amendments were approved by the ERS Board of Trustees at its December 7, 2021, meeting.

Section 69.3 is repealed because the rule language has been added as a new rule in §69.7. Section 69.5 is repealed because the rule language is obsolete. Section 69.7 is repealed because the rule language has been added as a new rule in §69.8. The repealed rules will not be republished.

The amendments and additions to Chapter 69 are adopted as part of ERS' ongoing statutory responsibility to review its rules and in order to implement Tex. Gov't Code §810.003, enacted by the 85th Legislature, Regular Session (2017) in S.B. 500, and §810.004, enacted by the 86th Legislature, Regular Session (2019) in S.B. 1570, regarding the termination of annuities of certain elected officials and corrections employees convicted of a felony.

No comments were received on the adopted rule amendments.

34 TAC §§69.1 - 69.9

The amendments are adopted under §815.102, Texas Government Code, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of other business of the Board.

§69.3. Termination of Annuities.

(a) The annuity of an elected official shall be terminated if:

(1) the elected official is convicted of a qualifying felony committed while in office; and

(2) the conduct underlying the qualifying felony arose directly from the official duties of the elected official's office.

(b) The annuity of a corrections officer shall be terminated if:

(1) the corrections officer is convicted of a qualifying felony; and

(2) the conduct underlying the qualifying felony arose directly from the person's service as a corrections officer.

(c) If the elected official or corrections officer is receiving an annuity at the time that the system receives notice of the conviction, the final annuity payment shall be paid on the last day of the month following the month in which the system receives the notice of conviction.

(d) If the annuity of an elected official or corrections officer is terminated pursuant to subsection (a) or (b) of this section, the system shall issue a refund of the person's remaining service retirement annuity contributions, including service purchase funds, with interest, unless the annuity is subject to an order of a court awarding any part of the annuity to a spouse, former spouse, or other alternate payee. A refund under this section is subject to an order of a court awarding all or part of the person's service retirement annuity contributions to a former spouse as provided by Tex. Gov't Code §810.003(f), except as otherwise provided by §69.4 and §69.5 of this chapter.

(e) The system shall reinstate the annuity and refund payments withheld during the suspension period, with interest, or if not retired shall reinstate membership and canceled service credit if:

(1) the conviction is overturned on appeal or the elected official or corrections officer meets all requirements for innocence under Tex. Civ. Prac. and Rem. Code §103.001(a)(2); and

(2) the system receives a completed application for reinstatement and a payment equal to the refund provided under subsection (d) of this section, not later than the 120th day after the conviction is overturned or the person meets all requirements for innocence.

(f) Interest under this chapter shall be calculated at the rate provided by Tex. Gov't Code §815.311 in effect at the time the system reinstates the annuity.

(g) Subject to applicable federal law, an elected official or a corrections officer whose annuity is terminated under this chapter is no longer an annuitant for purposes of Tex. Ins. Code Chapter 1551. Coverage shall terminate on the first day of the month following the final annuity payment.

(h) Service credit previously earned in any class by an elected official or corrections officer whose annuity is terminated under this chapter is no longer creditable service and may not be used, transferred, or repurchased under Tex. Gov't Code Chapters 803, 805, or 813 or under §833.102 or §838.102 unless the system reinstates the annuity because the conviction has been overturned or the person has met all requirements for innocence. If the conviction has been overturned or the person has met all requirements for innocence, interest shall be calculated as if there was no suspension period.

(i) A decision by the system under this chapter constitutes final agency action and no administrative appeal from the decision is available.

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 December 9, 2021.

TRD-202104964
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Effective date: December 29, 2021
Proposal publication date: October 29, 2021
For further information, please call: (877) 275-4377

16 TAC §§69.3, 69.5, 69.7

The rule repeals are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board, as well as §810.003(j) and §810.004(i) which instruct the governing body of a retirement system to adopt rules and procedures to implement these sections.

No other statutes are affected by the proposed repeals.

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 December 9, 2021.

TRD-202105057
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Effective date: December 29, 2021
Proposal publication date: October 29, 2021
For further information, please call: (877) 275-4377

CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.4, 85.6, 85.7

The Employees Retirement System of Texas (ERS) adopts the amendments and addition of a new rule to 34 Texas Administrative Code (TAC) Chapter 85, concerning Flexible Benefits, by amending §85.1 (Introduction and Definitions), §85.4 (Separate Plans), §85.7 (Enrollment) and adding new §85.6 (Relief Options due to the Coronavirus (COVID-19)), without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7198). The amendments and new rule were approved by the ERS Board of Trustees at its December 7, 2021, meeting. These sections will not be republished.

Sections 85.1, 85.4, and 85.7 are amended in order to clarify their interaction with §85.6.

Section 85.6, concerning Relief Options Due to the Coronavirus (COVID-19), is being added in order to implement the requirements of §214 of the Federal Taxpayer Certainty and Disaster Tax Relief Act of 2020 and other relevant federal law.

No comments were received on the amendments and new rule.

The amendments and new rule are adopted under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of funds of the retirement system.

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 December 7, 2021.

TRD-202104898
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Effective date: December 27, 2021
Proposal publication date: October 22, 2021
For further information, please call: (877) 275-4377

Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter P, Appeal Procedures for the Food and Nutrition Programs. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Tanya Vermeeren, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email to tanya.vermeeren@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register.*

TRD-202105054
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: December 13, 2021

The Texas Department of Agriculture (the Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 25, Subchapter A, Child and Adult Care Food Program (CACFP), and Title 4, Part 1, Chapter 25, Subchapter B, Summer Food Service Program (SFSP). This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Tanya Vermeeren, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email to tanya.vermeeren@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register.*

TRD-202105055
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: December 13, 2021

Credit Union Department

Title 7, Part 6

Chapter 91, Subchapter G, concerning lending powers, consisting of §91.701, (Lending Powers), 91.703 (Interest Rates), 91.704 (Real Estate Lending), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business and Commercial Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees) and 91.720 (Small-Dollar, Short-Term Credit).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in these chapters continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

- Does the rule organize the material to suit your needs? If not, how could the material be better organized?

- Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

- Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

- Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to cudmail@cud.texas.gov. Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202104974
John J. Kolhoff
Commissioner
Credit Union Department
Filed: December 10, 2021

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, (§§291.51 - 291.55), concerning Pharmacies (Nuclear Pharmacy (Class B)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24, 2022.

TRD-202104954
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Filed: December 9, 2021

The Texas State Board of Pharmacy files this notice of intent to review Chapter 305, (§305.1 and §305.2), concerning Educational Requirements, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24, 2022.

TRD-202104955
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Filed: December 9, 2021

The Texas State Board of Pharmacy files this notice of intent to review Chapter 309, (§§309.1 - 309.8), concerning Substitution of Drug Products, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Eamon D. Briggs, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., January 24, 2022.

TRD-202104956
Timothy L. Tucker, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Filed: December 9, 2021

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 74, Curriculum Requirements, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the State Board of Education (SBOE) in 19 TAC Chapter 74 are organized under the following subchapters: Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001-2002; Subchapter E, Graduation Requirements, Beginning with School Year 2004-2005; Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008; and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013.

Relating to the review of 19 TAC Chapter 74, Subchapters A-C, F, and G, the SBOE finds that the reasons for adopting Subchapters A-C, F, and G continue to exist and readopts the rules. No changes are necessary to Subchapter A-C, F, and G as a result of the review.

Relating to the review of 19 TAC Chapter 74, Subchapters D and E, it was determined that the graduation requirements in Subchapters D and E are out-of-date and are no longer necessary. The SBOE took action to approve the proposed repeal of Subchapters D and E for first reading and filing authorization at its November 19, 2021 meeting.

The SBOE received comments related to the review of Subchapters A-F.

Comment: The Waco Independent School District (ISD) director of accountability and data systems recommended that the requirements for older diplomas remain in Chapter 74. The commenter stated that knowing the diploma requirements needed by these students makes it easier to review transcripts.

Board Response: The SBOE disagrees and has determined that it was not appropriate to maintain historical graduation requirements in the TAC. The SBOE provides the following clarification. Historical graduation requirements are maintained by the Texas Education Agency and can be requested by interested parties.

Comment: Cambridge assessment international education's deputy regional director, governmental relations and K12 policy, requested that the SBOE add the Cambridge program to the relevant sections of the TAC to ensure consistency and parity with the Advanced Placement (AP) and International Baccalaureate (IB) programs for Texas students. In particular, the commenter cited the rules on performance acknowledgements and the AP-IB Incentive Program.

Board Response: The SBOE disagrees and has determined that statutory requirements in Texas Education Code (TEC), §28.025(c-5), and TEC, §28.053, do not permit the SBOE to amend their rules on performance acknowledgements and the AP-IB Incentive Program to include the Cambridge program. A change to statute would be required to permit the board to add the Cambridge program.

TRD-202105086

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 15, 2021

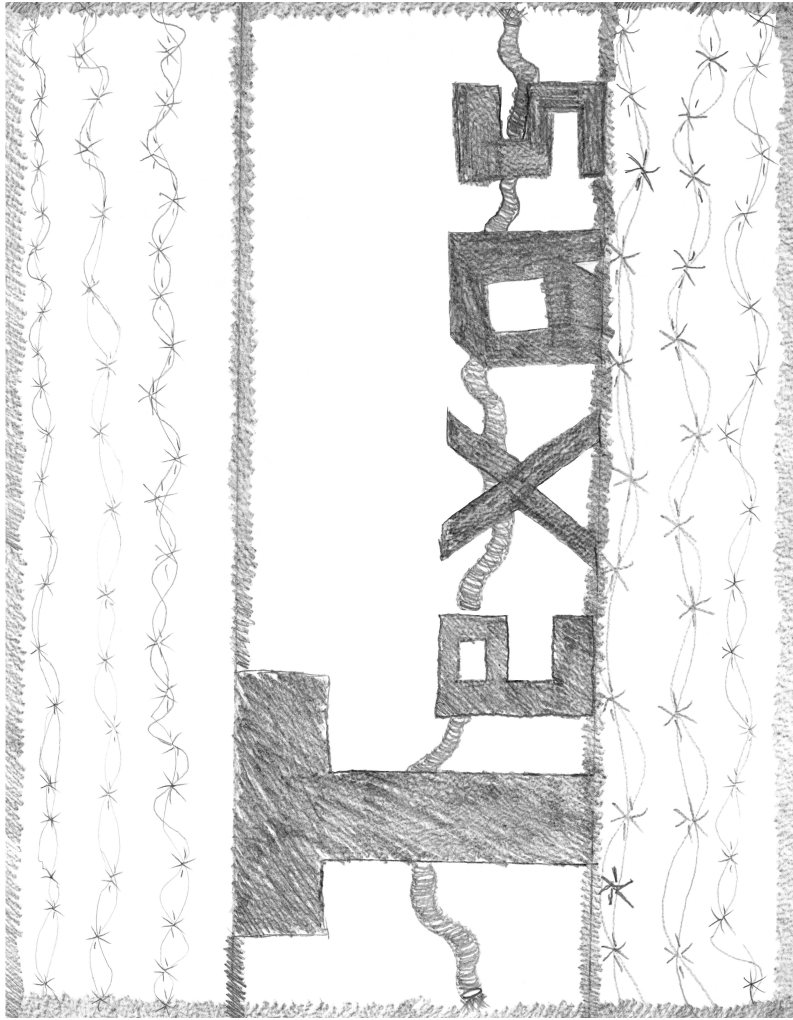
Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review that was published in the November 24, 2017, issue of the *Texas Register* (42 TexReg 6633), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC), Chapter 69, Membership, Annuity Termination, and Refunds (f/k/a Membership and Refunds), pursuant to Texas Government Code § 2001.039, to determine whether the reasons for adopting the rules in Chapter 69 continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reasons for adopting the rules in 34 TAC Chapter 69 continue to exist, and the Board readopts Chapter 69 with the amendments as published in the October 29, 2021, issue of the *Texas Register* (46 TexReg 7360) along with the changes from the published text that were adopted by the Board at its December 7, 2021, meeting. This completes ERS' review of 34 TAC Chapter 69, Membership, Annuity Termination, and Refunds.

TRD-202104965
Cynthia C. Hamilton
General Counsel
Employees Retirement System of Texas
Filed: December 9, 2021


TEXAS

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 26 TAC §748.303(a)

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES. (A)(ii) As soon as possible, but no later than [~~Within~~] 2 hours after the child's death.	(B)(i) YES. (B)(ii) As soon as possible, but no later than [~~Within~~] 2 hours after the child's death.	(C)(i) YES. (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES. (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES. (A)(ii) As soon as you become aware of it.	(B)(i) YES. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO. (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in	(A)(i) YES. (A)(ii) As soon as you become aware of it.	(B)(i) YES. (B)(ii) As soon as you become aware of it.	(C)(i) NO. (C)(ii) Not applicable.

substantial physical injury to a child.			
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES. (A)(ii) As soon as you become aware of it.	(B)(i) YES. (B)(ii) As soon as you become aware of it	(C)(i) NO. (C)(ii) Not applicable.

(6) A child is indicted, charged, or arrested for a crime [~~, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained~~]; or when law enforcement responds to an alleged incident at the operation that could result in criminal charges being filed against the child.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES. (B)(ii) As soon as you become aware of it.	(C)(i) NO. (C)(ii) Not applicable.
(7) A child is issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.	(A)(i) NO. (A)(ii) Not applicable.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(C)(i) NO. (C)(ii) Not applicable.
(8)[~~(7)~~] The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES. (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES. (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.

(9)[(8)] The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES. (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES. (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES. (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(10)[(9)] The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES. (A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.	(B)(i) YES. (B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.	(C)(i) YES. (C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.

(11)[~~(10)~~] A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO. (C)(ii) Not applicable.
(12)[~~(11)~~] A suicide attempt by a child.	(A)(i) YES. (A)(ii) As soon as you become aware of the incident.	(B)(i) YES. (B)(ii) As soon as you become aware of the incident.	(C)(i) NO. (C)(ii) Not applicable.

Figure: 26 TAC §748.303(e)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES. (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.

(4) An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	(A)(i) YES. (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO. (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity (other than the Texas Department of Family and Protective Services Child Care Investigations division [~~Licensing~~]) of an employee, professional level service provider, contract staff, volunteer, or other adult at the operation.	(A)(i) YES. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO. (B)(ii) Not applicable.
(6) Any of the following relating to [~~An arrest; indictment; a county or district attorney accepts an "Information" regarding an official complaint against~~]an employee, professional level service provider, contract staff, volunteer, or other adult at the operation alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?): • An arrest; • An indictment; • An information regarding an official complaint accepted by a county or district attorney; or • An arrest warrant executed by[~~when~~] law enforcement [~~responds to an alleged incident to the operation~~].	(A)(i) YES. (A)(ii) As soon as [~~possible, but no later than 24 hours after~~]you become aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.
(7) A search warrant is executed by law enforcement at the operation.	(A)(i) YES. (A)(ii) As soon as you become aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.
(8) An allegation that an employee or caregiver: • Used a prohibited emergency behavior intervention technique, as outlined in §748.2451(b) of this	(A)(i) YES. (A)(ii) As soon as possible but no later than 24 hours after	(B)(i) YES. (B)(ii) As soon as possible but no later than 24 hours after you

chapter (relating to What types of emergency behavior intervention may I administer?); • Used a prohibited personal restraint technique, as outlined in §748.2605 of this chapter (relating to What personal restraint techniques are prohibited?); or • Used an emergency behavior intervention inappropriately, as outlined in §748.2463 of this chapter (relating to Are there any purposes for which emergency behavior intervention cannot be used?), §748.2705 of this chapter (What mechanical and other restraint devices are prohibited?), or §748.2801 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).	you become aware of the incident.	become aware of the incident.

Figure: 26 TAC §748.811(a)

Type of training for caregivers:	When must the training be completed?
(1) Orientation, as required by §748.831 of this subchapter (relating to What is the orientation requirement for caregivers and employees?).	Prior to having contact with children.
(2) Pre-service training, as required by §748.863 of this subchapter (relating to What are the pre-service training requirements for a caregiver?).	Varies with the type of training. See §748.863 of this subchapter.
(3) First-aid and CPR, as required by §748.911 of this subchapter (relating to Who must have first aid and CPR training?).	(A) A caregiver must be certified in CPR prior to being the only caregiver counted in the child to caregiver ratio; and (B) Each caregiver must be certified in first aid within 90 days of the caregiver's employment.
(4) Annual training, as required by §748.930 of this subchapter (relating to What are the annual training requirements for a caregiver?).	(A) Within 12 months of employment; and (B) As further required by §748.935 of this subchapter (relating to When must an employee or caregiver complete annual training?) and §748.936 of this subchapter (relating to When must a caregiver complete emergency behavior intervention training?).

Figure: 26 TAC §748.813

Type of training for employees:	**When must the training be completed?**
(1) Orientation, as required by §748.831 of this subchapter (relating to What is the orientation requirement for caregivers and employees?).	Prior to beginning job duties.
(2) Pre-service training, as required by §748.864 of this subchapter (relating to What are the pre-service training requirements for an employee?).	Within 90 days of beginning job duties.
(3) Annual training, as required by §748.931 of this subchapter (relating to What are the annual training requirements for an employee?).	(A) Within 12 months of employment; and (B) As further required by §748.935 of this subchapter (relating to When must an employee or caregiver complete annual training?).

Figure: 26 TAC §748.863(a)

What type of pre-service training is required?	What caregivers must receive the training?	How many hours of training are required?	When must the caregivers complete the training?
(1) General pre-service training.	(A) All caregivers.	(B) 8 hours.	(C) At least 4 hours of training before the caregiver may be counted in the child to caregiver ratio, and the remaining hours within 30 days of becoming a caregiver.
(2) Emergency behavior intervention (EBI), if you do not allow the use of EBI.	(A) Caregivers who care for children receiving: (i) Only child care services or programmatic services; or (ii) Treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder.	(B) 8 hours.	(C) At least 4 hours of training before the caregiver may be counted in the child to caregiver ratio, and the remaining hours within 90 days of becoming a caregiver.

(3) EBI, if you allow the use of EBI.	(A) Caregivers who care for children receiving: (i) Only child care services or programmatic services; or (ii) Treatment services for emotional disorders, intellectual disabilities, or autism spectrum disorder.	(B)(i) 8 hours for caregivers who only care for children described in subsection (a)(3)(A)(i) of this section; or (ii) 16 hours for caregivers who care for children described in subsection (a)(3)(A)(ii) of this section.	(C)(i) At least half of the hours of training before the caregiver may be counted in the child to caregiver ratio, and the remaining hours within 90 days of becoming a caregiver; and (ii) A caregiver may not administer any form of EBI before completing all the required training hours for EBI, except for administering a short personal restraint.
(4) Safe sleeping.	(A) Caregivers who care for children younger than 2 years of age.	(B) No specified hours.	(C) A caregiver must complete the training before the caregiver may be counted in the child to caregiver ratio for children younger than 2 years of age.
(5) Administering psychotropic medication	(A) Caregivers who administer psychotropic medication.	(B) No specified hours.	(C) A caregiver must complete the training before administering a psychotropic medication.

Figure: 26 TAC §748.864(a)

What type of pre-service training is required?	**Who is required to receive the training?**	**How many hours of training are required?**	**When must the training be completed?**
(1) Normalcy.	Child care administrators, professional level service providers, treatment directors, and case managers.	2 hours.	Before the person can be the designated person that makes decisions regarding a child participating in childhood activities, or within 90 days of beginning job duties, whichever occurs earlier.

What type of pre-service training is required?	**Who is required to receive the training?**	**How many hours of training are required?**	**When must the training be completed?**
(2) Emergency behavior intervention.	Child care administrators, professional level service providers, treatment directors, and case managers, excluding any employee who is exclusively assigned to the care of children receiving treatment services for primary medical needs.	8 hours.	Within 90 days of beginning job duties.

Figure: 26 TAC §748.930(a)

A caregiver who cares for children at:	**Must complete the following number of annual training hours:**
(1) An operation that has: (A) Less than 25 children in care who are receiving treatment services; and (B) Less than 30% of their total population of children in care are receiving treatment services.	20 hours.
(2) An operation that has: (A) 25 or more children in care who are receiving treatment services; or (B) 30% or more of the total population of children in care are receiving treatment services.	50 hours.
(3) A cottage home.	20 hours.

Figure: 26 TAC §748.930(b)

Type of Training	**Hours**
(1) Emergency Behavior Intervention.	(A) 4 hours, every 6months, for a caregiver identified in subsection (a)(1) or (a)(2) of this section; (B) 4 hours for a caregiver identified in subsection (a)(3) of this section; or (C) No hours for a caregiver who cares exclusively for children receiving treatment services for primary medical needs.
(2) Trauma Informed Care.	2 hours
(3) Normalcy.	1 hour.
(4) Transportation Safety, if the caregiver transports a child in care whose chronological or developmental age is younger than nine years old.	2 hours.
(5) Administering Psychotropic Medication, if the caregiver administers psychotropic medication.	No specified hours.

Figure: 26 TAC §748.931(a)

Type of Employee	Hours of Annual Training
(1) Child-care administrators, professional level service providers, treatment directors, and case managers who do not hold a relevant professional license.	20 hours.
(2) Child-care administrators, professional level service providers, treatment directors, and case managers who hold a relevant professional license.	15 hours.

Figure: 26 TAC §748.931(b)

Type of Training	**Hours**
(1) Trauma Informed Care.	2 hours.
(2) Normalcy.	1 hour.
(3) Transportation Safety, if the employee transports a child in care whose chronological or developmental age is younger than nine years old.	2 hours.

Figure: 26 TAC §748.931(c)

Type of Training	**Hours**
(1) Normalcy, if the employee is a designated person who makes decisions regarding any child's participation in childhood activities.	1 hour.
(2) Transportation Safety, if the employee transports a child in care whose chronological or developmental age is younger than nine years old.	2 hours.

Figure: 26 TAC §748.2507 [~~40 TAC §748.2507~~]

Type of Emergency Behavior Intervention	Conditions:
(1) Short personal restraint.	Not applicable, because short personal restraints do not require orders.
(2) Personal restraint.	Note: Continuation orders are required for extending the maximum amount of time for a personal restraint; and an order or recommendation from the service planning team is needed to forestall some triggered reviews. (A) Orders must include the number of times a child may be restrained in a seven-day period. (B) If the orders allow more than three restraints within a seven-day period, the order must include a plan for reducing the need for emergency behavior intervention. (C) The licensed psychiatrist or psychologist must review PRN orders for personal restraint at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record. (D) PRN orders may not be used to restrain a child beyond the maximum length of time for personal restraint. See §748.2801 of this chapter[~~title~~] (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).
(3) Emergency medication.	The licensed physician must review PRN orders for emergency medication at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.
(4) Seclusion.	(A) A licensed psychiatrist ordering seclusion is permitted to use PRN orders; however, a licensed psychologist is not. (B) PRN orders may not be used to seclude a child beyond the maximum length of time for seclusion. See §748.2801 of this chapter[~~title~~].

	(C) The psychiatrist must review PRN orders for seclusion at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.
(5) Mechanical restraint.	PRN orders are not permitted.

Figure: 26 TAC §748.2553 [~~40 TAC §748.2553~~]

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint.	(A) Immediately when an emergency health situation occurs during the restraint and the[~~. The~~] caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint.	(A) Immediately when an emergency health situation occurs during the restraint and the[~~. The~~] caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine transitional hold; (C) As soon as the child's behavior is no longer a danger to himself or others; (D) As soon as the medication is administered; or (E) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication.	Not applicable.
(4) Seclusion.	(A) Immediately when an emergency health situation occurs during the seclusion and the[~~. The~~] caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for seclusion is reached; (E) If the child falls asleep in seclusion[~~. In this situation~~], the caregiver must:

	(i) Unlock the door; (ii) Continuously observe the child until he awakens; and (iii) Evaluate his overall well-being; or (F) If the child is receiving emergency care services: (i) As soon as the child is no longer a danger to himself or others; (ii) Upon the arrival of a medical professional; or (iii) Upon assistance from law enforcement or the fire department.
(5) Mechanical restraint.	(A) Immediately when an emergency health situation occurs during the restraint and the[. The] caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for mechanical restraint is reached; or (E) If the child falls asleep in the mechanical restraint. In this situation, the caregiver must release the child from the restraint and continuously observe the child until he awakens and evaluate him.

Figure: 26 TAC §748.2801 [~~40 TAC §748.2801~~]

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint.	One minute.
(2) Personal restraint.	(A) For a child of any age, 30 minutes. (B) A prone or supine personal restraint transitional hold may not exceed one minute.
(3) Emergency medication.	Not applicable.
(4) Seclusion.	(A) For a child under nine years old, one hour. (B) For a child nine years old or older, two hours.
(5) Mechanical restraint.	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour.

Figure: 26 TAC §748.3757(a) [~~40 TAC §748.3757(a)~~]

If the age of the youngest child is…	Then the Swimming Child/Adult Ratio is
0 to 23 months old	1:1
2 years old	2:1
3 years old	3:1
4 years old	4:1
5 years old or older	You must meet the applicable child/caregiver ratios as provided in §748.1003 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children’s waking hours?).

Figure: 26 TAC §749.503(a)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) As soon as possible, but no later than [~~Within~~] 2 hours after the child's death.	(B)(i) YES (B)(ii) As soon as possible, but no later than [~~Within~~] 2 hours after the child's death.	(C)(i) YES (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO (C)(ii) Not Applicable
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES, including whether you plan to move the child until the investigation is complete. (A)(ii) As soon as you become aware of it.	(B)(i) YES, including whether you plan to move the child until the investigation is complete. (B)(ii) Immediately after ensuring the safety of the child.	(C)(i) NO (C)(ii) Not applicable

(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in substantial physical injury to the child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(ii) Not applicable
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable

(6) A child is indicted, charged, or arrested for a crime[~~, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained~~]; or when law enforcement responds to an alleged incident at the foster home that could result in criminal charges being filed against the child.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(7) A child is issued a ticket at school by law enforcement or any other citation that does not result in the child being detained.	(A)(i) NO (A)(ii) Not applicable.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(8)[~~(7)~~] The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(9)[~~(8)~~]The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.

(10)[(9)]The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES (A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.	(B)(i) YES (B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.	(C)(i) YES (C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the foster home.

(11)[~~(10)~~] A child in your care contracts a communicable disease that the law requires you to report to the Texas Department of State Health Services (DSHS) as specified in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable
(12)[~~(11)~~] A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	C)(i) NO (C)(ii) Not applicable

Figure: 26 TAC §749.503(e)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity (other than the Texas Department of Family and Protective Services Child Care Investigations division[~~Licensing~~]) of an employee, professional level	(A)(i) YES (A)(ii) As soon as possible, but no later	(B)(i) NO (B)(ii) Not applicable.

service provider, foster parent, contract staff, volunteer, or other adult at the agency.		
(6) Any of the following relating to [~~An arrest, indictment, or a county or district attorney accepts an "Information" regarding an official complaint, against~~]an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?): An arrest; An indictment; Information regarding an official compliant accepted by a county or district attorney; or An arrest warrant executed by[~~when~~] law enforcement [~~responds to an alleged incident at the foster home~~].	(A)(i) YES (A)(ii) As soon as [~~possible, but no later than 24 hours after~~]you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.
(7) A search warrant is executed by law enforcement at the operation or a foster home.	(A)(i) YES. (A)(ii) As soon as you become aware of the situation.	(B)(i) NO. (B)(ii) Not applicable.

(8) An allegation that an employee or caregiver: Used a prohibited emergency behavior intervention technique, as outlined in §749.2051(b) of this chapter (relating to What types of emergency behavior intervention may I administer?); Used a prohibited personal restraint technique, as outlined in §749.2205 of this chapter (relating to What personal restraint techniques are prohibited?); or Used an Emergency Behavior Intervention inappropriately, as outlined in §749.2063 or §749.2281 of this chapter (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).	(A)(i) YES (A)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.	(B)(i) YES (B)(ii) As soon as possible but no later than 24 hours after you become aware of the incident.

Figure: 26 TAC §749.675[~~40 TAC §749.675~~]

Options for qualifications:	A license in social work or another human services field:	Educational qualifications:	Professional qualifications. Any field placement or practicum experience may not be counted:
Option 1	Yes	(A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time experience in a child-placing agency, in a residential child-care operation, or as a Child Protective Services caseworker[~~conservatorship caseworker or foster adoptive home development worker~~] for the Texas Department of Family and Protective Services (DFPS)[~~the department~~]. The experience must be in conducting assessments, service planning, or case management duties.
Option 2	No	(1) (A) A master's degree from an accredited college or university; and (B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction; or (2) (A) A bachelor's degree from an accredited college or	Two years of documented full-time experience in a child-placing agency, in a residential child-care operation, or as a Child Protective Services caseworker[~~conservatorship caseworker or foster adoptive home development worker~~] for DFPS[~~the department~~]. The experience must be in conducting assessments, service planning, or case management duties.

		university in social work or other human services field; and (B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction	
Option 3	No	(A) A bachelor's degree from an accredited college or university; and (B) Nine credit hours in undergraduate or graduate level courses that focus on family and individual function and interaction.	Three years of documented full-time experience in a child-placing agency, in a residential child-care operation, or as a Child Protective Services caseworker[~~conservatorship caseworker or foster adoptive home development worker~~] for DFPS[~~the department~~]. The experience must be in conducting assessments, service planning, or case management duties.

Figure: 26 TAC §749.931(a)

Type of Employee	Hours of Annual Training
(1) Child placement staff with less than one year of child-placing experience	30 hours
(2) Child placement staff with at least one year of child-placing experience; [~~and~~] all child placement management staff, except those exclusively assigned to provide adoption services	20 hours
(3) Executive directors, treatment directors, and fulltime professional service providers who do not hold a relevant professional license	20 hours
(4) Child-placing agency administrators, executive directors, treatment directors, and full-time professional service providers who hold a relevant professional license	15 hours

Figure: 26 TAC §749.931(b)

Type of Training	Hours
(1) Prevention, Recognition, and Reporting on Child Abuse, Neglect, and Exploitation	1 hour[~~, unless the employee is an executive director~~]
(2) Trauma Informed Care	2 hours
(3) Normalcy	1 hour

Figure: 26 TAC §749.1135[~~40 TAC §749.1135~~]

If:	Then:
(1) You intend to provide treatment services for a child with an emotional disorder or autism spectrum disorder	(A) The admission assessment must include a written, dated, and signed: (i) Psychiatric evaluation or psychological evaluation, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §749.43 of this title (relating to What do certain words and terms mean in this chapter?). (B) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within: (i) 14 months of the date of admission, if the child is coming from another regulated placement; or (ii) Six months of the date of admission, if the child is not coming from another regulated placement. (C) The admission assessment must include the reasons[~~reason(s)~~] for choosing treatment services for the child. (D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.

(2) You intend to provide treatment services for a child with an intellectual disability	(A) The admission assessment must include a written, dated, and signed: (i) Psychological evaluation with psychometric testing, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §749.43 of this title. (B) A psychological evaluation or psychosocial assessment must be completed within 14 months of the date of admission. (C) A psychological evaluation must: (i) Be performed by a licensed psychologist who has experience with intellectual disabilities or published scales; (ii) Include the use of standardized tests to determine the intellectual functioning of a child. The test results must be documented in the evaluation; (iii) Determine and document the child's level of adaptive functioning; and (iv) Indicate manifestations of an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5). (D) The admission assessment must include the reasons[~~reason(s)~~] for choosing treatment services for the child. (E) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.

(3) You intend to provide treatment services for a child with primary medical needs	(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. An[~~There must also be an~~] evaluation from a health care professional[~~the physician, a nurse practitioner, or a physician's assistant that~~] must confirm[~~confirms~~] that the child can be cared for appropriately in a foster home setting. (B) There must be a documented evaluation from a health care professional that the foster parents have been trained to meet the needs of the child and demonstrated competency. (C) The written orders [~~and/~~]or hospital discharge must include orders for: (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. (D) The admission assessment must include the reasons[~~reason(s)~~] for choosing treatment services for the child. (E) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.

<table>
<tr>
<td>(4) The child's behavior or [~~and/or~~] history within the last two months indicates that the child is an immediate danger to self or others</td>
<td>(A) The admission assessment must include a written, dated, and signed:

(i) Psychiatric evaluation or psychological evaluation, including the child's diagnosis; or

(ii) Psychosocial assessment as defined in §749.43 of this title.

(B) A psychiatric evaluation or psychological evaluation must include:

(ii) The child's diagnosis, if applicable;

(ii) An assessment of the child's needs and potential danger to self or others; and

(iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the child's service plan and must be implemented.

(C) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within:

(i) 14 months of the date of admission, if the child is coming from another regulated placement; or

(ii) Six months of the date of admission, if the child is not coming from another regulated placement.</td>
</tr>
</table>

Figure: 26 TAC §749.2107(a)[~~40 TAC §749.2107~~]

Type of Emergency Behavior Intervention	Conditions:
(1) Short personal restraint	Not applicable, because short personal restraints do not require orders.
(2) Personal restraint	(A) Orders must include the number of times a child may be restrained in a seven-day period. (B) If the orders allow more than three restraints within a seven-day period, the order must include a plan for reducing the need for emergency behavior intervention. (C) The licensed psychiatrist or psychologist must review PRN orders for personal restraint at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record. (D) PRN orders may not be used to restrain a child beyond the maximum length of time for personal restraint, as describe in[~~. See~~] §749.2281 of this chapter[~~title~~] (relating to What is the maximum length of time that an emergency behavior intervention can be administered to a child?).
(3) Emergency medication	The licensed physician must review PRN orders for emergency medication at least every 30 days. The review must include written clinical justification for the continuation of PRN orders and be documented in the child's record.

Figure: 26 TAC §749.2153[~~40 TAC §749.2153~~]

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine transitional hold; (C) As soon as the child's behavior is no longer a danger to himself or others; (D) As soon as the medication is administered; or (E) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.

Figure: 26 TAC §749.2281[~~40 TAC §749.2281~~]

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child of any age, 30 minutes. (B) A prone or supine personal restraint transitional hold may not exceed one minute.
(3) Emergency medication	Not applicable.

Figure: 26 TAC §749.3137(a)[~~40 TAC §749.3137(a)~~]

If the age of the youngest child is…	Swimming Child/Adult Ratio
(1) 0 to 23 months old	1:1
(2) 2 years old	2:1
(3) 3 years old	3:1
(4) 4 years old	4:1
(5) 5 years old or older in a foster family home[~~or foster group home~~]; and either: (A) One child is receiving treatment services for primary medical needs; or (B) Three or more children are receiving treatment services	4:1
(6) 5 years old or older in a foster family home[~~or foster group home~~], no children are receiving treatment services for primary medical needs, and no more than two children are receiving treatment services	6:1

Figure: 26 TAC §749.3391(a)

Type of Information:	Including[÷]
(1) Abuse or neglect history,[÷]	Physical, sexual, or emotional abuse history.
(2) Health History,[÷]	(A) Current health status; (B) Birth history, neonatal history, and other medical, dental, psychological, or psychiatric history, including: (i) Available results and diagnoses of any medical or dental examinations; (ii) Available results and diagnoses of any psychological, psychiatric, or social evaluations; and (iii) To the extent known by the Department of Family and Protective Services based on information collected under Human Resources Code §264.019: (I) Whether the child's birth mother consumed alcohol during pregnancy; and (II) Whether the child has been diagnosed with fetal alcohol spectrum disorder; and (C) Immunization record.
(3) Social history,[÷]	Information about past and existing relations among the child and the child's siblings, birth parents, extended family members, and other persons who have had physical possession of or legal access to the child.
(4) Educational History,[÷]	(A) Enrollment and performance in educational institutions; (B) Results of educational testing and standardized tests; and (C) Special educational needs, if any.
(5) Family History,	Information about the child's birth parents, maternal and paternal grandparents, other children born to either of the child's birth parents, and extended family members, including their: (A) Health and medical history, including any information obtained in the medical history report and information on genetic diseases or disorders; (B)Current health status; (C) If deceased, cause of and age of death;

	(D) Height, weight, eye, and hair color; (E) Nationality and ethnic backgrounds; (F) General levels of educational and professional achievements; (G) Religious backgrounds; (H) Results of any psychological, psychiatric, or social evaluations, including the date of any such evaluation, any diagnosis, and a summary of any findings; (I) Any criminal conviction record relating to the following: (i) A misdemeanor or felony classified as an offense against the person or family; (ii) A misdemeanor or felony classified as public indecency; or (iii) A felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act; and (J) Any information necessary to determine whether the child is entitled to, or otherwise eligible for, state or federal financial, medical, or other assistance.

Figure: 26 TAC §749.3391(b)

Type of Information:	Including[~~:~~]
(1) History of previous Placements,[~~:~~]	Information about the child's previous placements, including the dates [~~date(s)~~]and reasons [~~reason(s)~~]for placement.
(2) Child's legal status,[~~:~~]	Information about the child's legal status.
(3) Child's understanding of adoptive placement,[~~:~~]	Information about the child's understanding of adoptive placement.

Figure: 26 TAC §749.4155[~~40 TAC §749.4155~~]

Who is required to receive the annual training?	How many hours of annual training and what types of annual training are needed?
(1) All Caregivers	(A) For homes with two foster parents, the foster parents must receive a total of 50 hours of annual training. Of these 50 hours: (i) Eight hours for each foster parent must be on training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours for each foster parent must be on training specific to trauma informed care; (iii) Four hours for each foster parent must be on training specific to trafficking victims, as further described in §749.4157 of this title (relating to What areas or topic must the four hours of annual training regarding trafficking victims include?); and (iv) The remaining 22 hours must be distributed appropriately, and each foster parent must receive some amount of the remaining training. (B) For all other caregivers, including homes with one foster parent, 30 hours. Of these 30 hours: (i) Eight hours must be on training specific to the emergency behavior interventions allowed by your agency; (ii) Two hours must be on training specific to trauma informed care; and (iii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this division (relating to What areas or topics must the four hours of training regarding trafficking victims include?)[~~title~~]. [~~(C) Annual training must include two hours of transportation safety training if the caregiver transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.~~]
(2) Child placement staff with less than one year of child-placing experience	(A) 30 hours for the initial year. Of these 30 hours: (i) Two hours must be on training specific to trauma

	informed care; and (ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this division[~~title~~]. (B) 20 hours after the initial year. Of these 20 hours: (i) One hour must be on training specific to trauma informed care; and (ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this division[~~title~~]. (C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. [~~(D) Annual training must include two hours of transportation safety training if the staff transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.~~]
(3) Child placement staff with at least one year of child-placing experience, and child placement management staff	(A) 20 hours. Of these 20 hours: (i) One hour must be on training specific to trauma informed care; and (ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this division[~~title~~]. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. [~~(C) Annual training must include two hours of transportation safety training if the staff transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.~~]
(4) Child-placing agency administrators, executive directors, treatment directors, and full-time	(A) 15 hours. (B) Annual training hours used to maintain a person's relevant professional license may be used to complete these hours.

professional service providers who hold a relevant professional license	(C) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. [~~(D) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.~~]
(5) Executive directors, treatment directors, and full-time professional service providers who do not hold a relevant professional license	(A) 20 hours. Of these 20 hours: (i) One hour must be on training specific to trauma informed care; and (ii) Four hours must be on training specific to trafficking victims, as further described in §749.4157 of this division[~~title~~]. (B) There are no annual training requirements for emergency behavior interventions. However, if there is a substantial change in techniques, types of intervention, or agency policies regarding emergency behavior intervention, then the staff must be re-trained. [~~(C) Annual training must include two hours of transportation safety training if the person transports a child placed in a foster group home whose chronological or developmental age is younger than nine years old.~~]
(6) Child-placing agency administrators, treatment directors, child placement staff, child placement management staff, and full-time professional service providers	At least one hour of annual training must focus on prevention, recognition, and reporting of child abuse and neglect, including: (A) Factors indicating a child is at risk for abuse or neglect; (B) Warning signs indicating a child may be a victim of abuse or neglect; (C) Internal procedures for reporting child abuse or neglect; and (D) Community organizations that have training programs available to child-placing agency staff members, children, and parents.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Texas Commission on Environmental Quality v. Union Pacific Railroad Company, Billy F. Woodward, Sue H. Woodward, Jesse L. Myrow, Wesley R. Myrow, Donald L. Shoemaker, and Marsha L. Shoemaker;* Cause No. D-1-GN-17-003918, in the 250th Judicial District Court of Travis County, Texas.

Background: The State filed the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") on August 8, 2017, for a Superfund cost recovery action seeking to recover cleanup costs incurred at the Woodward Industries, Inc. Proposed State Superfund Site in Nacogdoches County, Texas ("Site"). East Texas Wood Treating Company, and subsequently Woodward Industries, conducted wood treatment operations at the Site. As a result of these operations, the soil at the Site became contaminated with pentachlorophenol. In 1982, Woodward Industries, Inc. discontinued wood treatment operations at the Site. The TCEQ conducted multiple remedial investigations of the Site between April 2009 and August 2010 and on July 11, 2011, the TCEQ began conducting removal and clean-up actions. On April 20, 2021, an agreed final judgment was entered with Billy F. Woodward, Deceased, and through his wife, Sue H. Woodward, Individually and as Executrix of the Estate of Billy F. Woodward. Now, Donald L. Shoemaker and Marsha L. Shoemaker have agreed to reimburse TCEQ for part of the response costs expended.

Proposed Settlement: The parties propose an Agreed Final Judgment which includes a contribution from the two settling parties in the amount of $5,000.00 for the TCEQ's response costs. Of this sum, $4,000.00 shall be designated as reimbursement for the TCEQ's response costs and $1,000.00 shall be designated as attorneys' fees. In addition, the TCEQ will receive the sum of $10,000.00 in satisfaction of its statutory Lien Affidavit in the amount of $1,681,952.88, recorded on April 3, 2014, in Vol. 4072, Page 125 of the Real Property Records of Nacogdoches County, Texas.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to: Tyler J. Ryska, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; by fax to (512) 320-0911; or by email to Tyler.Ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202105082
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: December 15, 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 12/20/21 - 12/26/21 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/20/21 - 12/26/21 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-202105074
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 14, 2021

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from First Service Credit Union (Houston) seeking approval to merge with People's Trust Federal Credit Union (Houston), with the latter being the surviving credit union. In accordance with the Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202105080
John J. Kolhoff
Commissioner
Credit Union Department
Filed: December 15, 2021

♦ ♦ ♦

Applications to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its principal place of business was received from Cen-Tex Manufacturing Credit Union, Brownwood, Texas. The credit union is proposing to change its domicile to 4488 Hwy 377 South, Brownwood, Texas 76804.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202105081
John J. Kolhoff
Commissioner
Credit Union Department
Filed: December 15, 2021

♦ ♦ ♦

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

MTCU, Midland, Texas - See *Texas Register* dated July 30, 2021.

Public Employees Credit Union, Austin, Texas - See *Texas Register* dated October 29, 2021.

TRD-202105079
John J. Kolhoff
Commissioner
Credit Union Department
Filed: December 15, 2021

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 27, 2022.** 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 January 27, 2022.** 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: 7-ELEVEN, INCORPORATED dba 7-Eleven Store 59519; DOCKET NUMBER: 2021-0568-PST-E; IDENTIFIER: RN102492634; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(ii) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Courtney Gooris, (512) 239-1118; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Artesian Lakes, Ltd.; DOCKET NUMBER: 2021-0665-PWS-E; IDENTIFIER: RN102697471; LOCATION: Romayor, Liberty County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: $52; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Alamo Heights; DOCKET NUMBER: 2021-0688-PWS-E; IDENTIFIER: RN101428001; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(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; PENALTY: $50; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Cowtown RV Park, Ltd.; DOCKET NUMBER: 2021-0675-MWD-E; IDENTIFIER: RN101222792; LOCATION: Aledo, Parker 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 WQ0014003001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Davis Park Development Ltd.; DOCKET NUMBER: 2021-0993-WQ-E; IDENTIFIER: RN111236352; LOCATION: Lubbock, Lubbock 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: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: Murphy Oil USA, Incorporated dba Murphy USA 6627; DOCKET NUMBER: 2021-0953-PST-E; IDENTIFIER: RN102270204; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health & Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: $4,274; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Ray French Land Company LTD; DOCKET NUMBER: 2021-1419-WQ-E; IDENTIFIER: RN111324679; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: home construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: S & W Construction Partners LP; DOCKET NUMBER: 2021-1432-WQ-E; IDENTIFIER: RN111295036; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: general contractor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Tippins, Alma E; DOCKET NUMBER: 2021-1548-WQ-E; IDENTIFIER: RN103746954; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2021-0696-PWS-E; IDENTIFIER: RN101438174; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202105059
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 14, 2021

Enforcement Orders

An agreed order was adopted regarding City of Hitchcock, Docket No. 2020-1019-WQ-E on December 14, 2021, assessing $6,250 in administrative penalties with $1,250 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Eastman Chemical Company, Docket No. 2020-1040-AIR-E on December 14, 2021, assessing $7,350 in administrative penalties with $1,470 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VELVIN OIL COMPANY, INC., Docket No. 2020-1391-WQ-E on December 14, 2021, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wilbarger Creek Municipal Utility District No. 2, Docket No. 2020-1413-MWD-E on December 14, 2021, assessing $4,312 in administrative penalties with $862 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brian L. Murray and Patricia A. Frey-Murray, Docket No. 2020-1603-PWS-E on December 14, 2021, assessing $7,250 in administrative penalties with $1,450 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Pipeline Mid-Continent WestTex LLC, Docket No. 2021-0072-AIR-E on December 14, 2021, assessing $7,313 in administrative penalties with $1,462 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HWY 2243 GROCERY, INC. dba Jiffy Mart 2, Docket No. 2021-0076-PST-E on December 14, 2021, assessing $1,651 in administrative penalties with $330 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KMF ENTERPRISES, INC. dba Sweetwater Chevron, Docket No. 2021-0213-PST-E on December 14, 2021, assessing $4,999 in administrative penalties with $999 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Freeport LNG Development, L.P., Docket No. 2021-0284-AIR-E on December 14, 2021, assessing $2,626 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Smith County, Docket No. 2021-0297-WQ-E on December 14, 2021, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MUNISHA, INC. dba Grab All Drive Inn Grocery, Docket No. 2021-0304-PST-E on December 14,

2021, assessing $4,575 in administrative penalties with $915 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ballinger, Docket No. 2021-0415-PWS-E on December 14, 2021, assessing $1,035 in administrative penalties with $207 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Sweeny, Docket No. 2021-0424-PWS-E on December 14, 2021, assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding DP Construction, LLC, Docket No. 2021-0435-WQ-E on December 14, 2021, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202105088
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 15, 2021

Enforcement Orders

An agreed order was adopted regarding Heidi Fensterbush and Michael D. Fensterbush dba Country View Mobile Home Park and dba Valley Estates, Docket No. 2019-0776-PWS-E on December 15, 2021, assessing $8,706 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2019-1304-AIR-E on December 15, 2021, assessing $29,811 in administrative penalties with $5,962 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding REBEL CONTRACTORS, INC., Docket No. 2019-1386-WQ-E on December 15, 2021, assessing $15,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Mullins, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CROWN RECYCLING COMPANY, Docket No. 2019-1388-WQ-E on December 15, 2021, assessing $13,500 in administrative penalties with $2,700 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding GOODEN PETROLEUM, INC., Docket No. 2019-1496-PST-E on December 15, 2021, assessing $4,830 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Barrett Hollingsworth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Daniel Williams, Docket No. 2020-0283-WR-E on December 15, 2021, assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Antonio River Authority, Docket No. 2020-0336-MWD-E on December 15, 2021, assessing $20,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MDC Texas Operator LLC, Docket No. 2020-0978-AIR-E on December 15, 2021, assessing $9,062 in administrative penalties with $1,812 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of China, Docket No. 2020-1119-MWD-E on December 15, 2021, assessing $18,037 in administrative penalties with $3,607 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SEA Eagle Ford, LLC, Docket No. 2020-1139-AIR-E on December 15, 2021, assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Formosa Plastics Corporation, Texas, Docket No. 2020-1176-AIR-E on December 15, 2021, assessing $19,689 in administrative penalties with $3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HOLLYWOOD PARK AUTOMOTIVE, INC., Docket No. 2020-1249-PST-E on December 15, 2021, assessing $33,051 in administrative penalties with $6,610 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Tyler, Docket No. 2020-1254-MWD-E on December 15, 2021, assessing $13,500 in administrative penalties with $2,700 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Valero Refining-Texas, L.P., Docket No. 2020-1256-AIR-E on December 15, 2021, assessing $18,980 in administrative penalties with $3,795 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Federal Heath Sign Company, LLC, Docket No. 2020-1273-AIR-E on December 15, 2021, assessing $16,000 in administrative penalties with $3,200 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NNS Group Inc dba Shady Grove Food Mart, Docket No. 2020-1317-PST-E on December 15, 2021, assessing $41,513 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ShepTex Business Inc. dba Shepherd Market, Docket No. 2020-1528-PST-E on December 15, 2021, assessing $8,910 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OQ Chemicals Corporation, Docket No. 2020-1582-AIR-E on December 15, 2021, assessing $19,350 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Huntsman Petrochemical LLC, Docket No. 2020-1593-AIR-E on December 15, 2021, assessing $16,843 in administrative penalties with $3,368 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Pipeline Mid-Continent WestTex LLC, Docket No. 2021-0012-AIR-E on December 15, 2021, assessing $8,938 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Alpine, Docket No. 2021-0015-MWD-E on December 15, 2021, assessing $12,525 in administrative penalties with $2,505 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brook Ed Burnett, Docket No. 2021-0119-MLM-E on December 15, 2021, assessing $11,250 in administrative penalties with $2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fort Davis Water Supply Corporation, Docket No. 2021-0244-PWS-E on December 15, 2021, assessing $862 in administrative penalties with $862 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brazoria County, Docket No. 2021-0248-PWS-E on December 15, 2021, assessing $787 in administrative penalties with $787 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Goodyear Tire & Rubber Company, Docket No. 2021-0253-IWD-E on December 15, 2021, assessing $13,958 in administrative penalties with $2,791 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Keith Dorn and Cindy Dorn, Docket No. 2021-0290-MLM-E on December 15, 2021, assessing $2,645 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lone Star 259 Operating LLC dba Texan Stop 2, Docket No. 2021-0313-PST-E on December 15, 2021, assessing $5,812 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS KSD ENTERPRISE INC dba Savannah Food & Deli, Docket No. 2018-0725-PST-E on December 15, 2021, assessing $17,769 in administrative penalties with $3,553 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted dismissing an Agreed Order concerning McKinney Smelting, Inc., Docket No. 1997-0364-IHW-E on December 15, 2021. Information concerning any aspect of this order may be obtained by contacting Courtney Sprague, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202105089
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 15, 2021

Notice of District Petition

Notice issued December 9, 2021

TCEQ Internal Control No. D-10072021-009; TCCI Ponder Farms 2021 LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Ponder Farms Municipal Utility District of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 154.219 acres lo-

cated within Denton, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Ponder, Texas.

The petition further states that the proposed District will: (1) construct a water distribution system for domestic purposes; (2) construct a sanitary sewer system; (3) control, abate, and amend harmful excesses of water and the reclamation and drainage of overflowed lands within the proposed District; (4) construct and finance macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) construct, install, maintain, purchase and operate such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the petition requests authority to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to the state, a county, or a municipality for operation and maintenance, a road, or any improvement in aid of the road. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $27,485,000 ($16,905,000 for water, wastewater, and drainage plus $10,580,000 for roads). The Property described in Exhibit "A" is located wholly within the extraterritorial jurisdiction of the City of Ponder, Denton County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the district.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202104959
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2021

Notice of District Petition

Notice issued December 9, 2021

TCEQ Internal Control No. D-03262021-041; Legends Ranch Development, LLC, a Texas limited liability company submitted a petition for creation of Legends Ranch Municipal Utility District of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District and is owner of a majority in value of the Land; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 496.136 acres located within Denton County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Denton, Texas. The petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is (1) purchase, construct, acquire, improve or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) to collect, transport, process, dispose of and control domestic and commercial wastes; (3) to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) to purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $54,735,000 ($30,905,000 for water, wastewater, and drainage facilities and $23,830,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and

fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202104960
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2021

Notice of Minor Amendment and Pretreatment Program Substantial Modification Application

Notice Issued December 08, 2021

APPLICATION NO. WQ0010090001; The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010090001 issued to City of Garland, 200 North Fifth Street, Garland, Texas 75040 to authorize a substantial modification to the approved pretreatment program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 40,000,000 gallons per day. TCEQ received this application on August 23, 2021. The facility is located at 750 Duck Creek Way, south of Lake Ray Hubbard Dam and north of Interstate Highway 20 near the Town of Sunnyvale in Kaufman, County, Texas 75182. The treated effluent is discharged to Duck Creek, thence to the East Fork Trinity River in Segment No. 0819 of the Trinity River Basin. The unclassified receiving water use is intermediate aquatic life use for Duck Creek. The designated uses for Segment No. 0819 are primary contact recreation and intermediate 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=-96.518611%2C32.794166&level=12

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. Approval of the request for modification to the approved pretreatment program will allow the applicant to revise their technically based local limits and ordinance which incorporates such revisions to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit Nos. WQ0010090001 and WQ0010090002.

The TCEQ Executive Director has completed the technical review of the pretreatment program substantial modification 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 Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The pretreatment program substantial modification, fact sheet and executive director's preliminary decision, and draft permit are available for viewing and copying at the Kaufman County Library, 3790 S. Houston St., Kaufman, Texas 75142.

You may submit public comments or request a public meeting about this draft permit or on the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft permit or the application for the substantial modification of the pretreatment program. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the draft permit, or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program.

All written public comments and requests for a public meeting 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 of the date of publication of this notice. After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If you submit public comments, 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.

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.

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 draft permit, application for substantial modification of the pretreatment program, 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 City of Garland at the address stated above or by calling Mr. Stephen Conner, City of Garland, at (972) 205-3819.

TRD-202104945
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 8, 2021

Notice of Minor Amendment and Pretreatment Program Substantial Modification Application

Notice Issued December 08, 2021

APPLICATION NO. WQ0010543012; The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010543012 issued to City of Austin, c/o Director, Austin Water, 625 East 10th Street, Suite 800, Austin, Texas 78701, to authorize a substantial modification to the approved pretreatment program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 75,000,000 gallons per day. The facility is located at 1017 Fallwell Lane, Del Valle in Travis, County, Texas 78617. The treated effluent is discharged to directly to the Colorado River Below Lady Bird Lake/Town Lake in Segment No. 1428 of the Colorado River Basin. The designated uses for Segment No. 1428 are primary contact recreation, public water supply, and exceptional 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=-97.603888%2C30.207777&level=12

The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The request for approval complies with both federal and state requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication.

Approval of the request for modification to the approved pretreatment program will allow the applicant to incorporate the Streamlining Rule requirements (including three optional provisions), revise their technically based local limits, legal authority, enforcement response plan, and standard operating procedures (including forms) which incorporate such revisions and to continue to regulate the discharge of pollutants by industrial users into its treatment works facilities, to perform inspections, surveillance, and monitoring, to determine compliance with applicable pretreatment standards and requirements, and to enforce against noncompliant industrial users. The following treatment work facilities will be subject to the requirements of the pretreatment program: TPDES Permit Nos. WQ0010543012, WQ0010543011, and WQ0010543013.

The TCEQ Executive Director has completed the technical review of the pretreatment program substantial modification 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 Executive Director has also made a preliminary decision that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The pretreatment program substantial modification, fact sheet, and executive director's preliminary decision, and draft permit are available for viewing and copying at the City of Austin, Waller Creek Center, 625 E. 10th Street, 3rd Floor Suite 315, Austin, Texas 78710.

You may submit public comments or request a public meeting about this draft permit or the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft permit or the application for substantial modification of the pretreatment program. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the draft permit, or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program.

All written public comments and requests for a public meeting 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 of the date of publication of this notice.

After the deadline for public comments, the Executive Director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application.

If you submit public comments, 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.

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.

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 draft permit, application for substantial modification of the pretreatment program, 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 City of Austin at the address stated above or by calling Ms. Lisa Boatman, Engineer, Supervising Engineer, City of Austin, at (512) 972-0085.

TRD-202104946
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 8, 2021

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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 **January 27, 2022.** 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 January 27, 2022.** 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: Virginia M. Cole dba Frost Mobile Home Park; DOCKET NUMBER: 2021-0168-PWS-E; TCEQ ID NUMBER: RN101177889; LOCATION: approximately 0.20 miles northwest of the intersection of County Road 207 and Private Road 620 near Bay City, Matagorda County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(b)(1)(A)(i), by failing to provide a well capacity of 1.5 gallons per minute (gpm) per connection - specifically, the facility had 32 connections, requiring a well capacity of 48 gpm. However, only a capacity of 30 gpm was provided, indicating a 38% deficiency; PENALTY: $250; STAFF ATTORNEY: John S. Merculief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202105058
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: December 14, 2021

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Notice of Public Meeting for Municipal Solid Waste Permit Amendment: Proposed Permit No. 2185A

Application. USA Waste of Texas Landfills, Inc., 24275 Katy Freeway, Suite 450, Katy, Harris County, Texas 77494, has submitted an application to the Texas Commission on Environmental Quality (TCEQ) for a permit major amendment authorizing the name change of the facility to Hawthorn Park Recycling and Disposal Facility and the lateral and vertical expansion of the facility. The Hawthorn Park Recycling and Disposal Facility is located at 10550 Tanner Road, Houston, Harris County, Texas 77041. The TCEQ received this application on February 23, 2021. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/DLTvn. For the exact location, refer to the application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. **Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.**

Public Comment/Public Meeting. 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 Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal 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:

Tuesday, January 18, 2022 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 655-137-955. 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, (914) 614-3221 and enter access code 827-425-587.

Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

Information. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you

need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application is available for viewing and copying at Hillendahl Neighborhood Library, 2436 Gessner Road, Houston, Texas 77080, Monday, Tuesday, and Thursday 10:00 a.m. - 6:00 p.m., Wednesday 12:00 p.m. - 8:00 p.m., Friday 1:00 p.m. - 5:00 p.m., and Saturday 10:00 a.m. - 5:00 p.m. and may be viewed online at https://www.wm.com/wm/permits-texas/permits.jsp. Further information may also be obtained from USA Waste of Texas Landfills, Inc. at the address stated above or by calling Mr. Charles A. Rivette, Director, Planning and Development at (713) 253-4497.

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.

Issued Date: December 09, 2021

TRD-202104949
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 9, 2021

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Notice of Water Quality Application

The following notice was issued on December 10, 2021.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Vencorex US, Inc., which operates the Vencorex US Inc WWTP, an aliphatic polyisocyanate resins, organo rare earth, and rare earth product manufacturing facility (the Rare Earth Unit has been mothballed and the facility is undergoing remediation), has applied for a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001822000, to authorize the modification of the sampling point for analysis of Enterococci only via Outfall 001, and to remove an obsolete rotating biological contactor (biodisk) unit from the wastewater treatment process. The draft permit authorizes the discharge of treated wastewater consisting of process water from rare earth and organo rare earth manufacturing, utility water, stormwater, and treated domestic sewage at a daily average flow not to exceed 125,000 gallons per day via Outfall 001 (Phase I); treated wastewater consisting of process water from organo rare earth manufacturing, utility water, stormwater, and treated domestic sewage at a daily average flow not to exceed 125,000 gallons per day via Outfall 001 (Final); and stormwater on an intermittent and flow-variable basis via Outfall 002. The facility is located at 6213 East Highway 332, two miles southeast of the intersection of State Highway 288 and State Highway 332 near the City of Freeport, in Brazoria County, Texas 77541.

TRD-202104985
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 10, 2021

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Texas Health and Human Services Commission

Public Notice: Texas State Plan for Medical Assistance Amendment - Adult Mental Health §1915(i) Home and Community-based Services (HCBS) State Plan Benefit

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 21-0053 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The Centers for Medicare and Medicaid Services has approved the Adult Mental Health §1915(i) HCBS State Plan benefit through August 31, 2025. The requested effective date for this proposed amendment is October 1, 2021. The proposed amendment is estimated to have no fiscal impact.

The purpose of the proposed amendment is to make the following changes to the Quality Improvement Strategy for the benefit:

Modification of certain quality measures, as described below

Modification of timeframes for monitoring reviews from annual to biennial reviews and including desk reviews in addition to onsite reviews to obtain data for quality monitoring purposes

The amendment proposes to remove the following quality measures:

Number and percent of participants with services delivered in the Individual Recovery Plan (IRP), including the type, scope, amount, duration, and frequency specified in the service plan.

Number and percent of enrolled HCBS provider agencies serving HCBS clients (by provider type).

Number and percent of providers that have payment recouped for HCBS services without supporting documentation.

The amendment proposes to replace current quality measures with new measures as follows:

Current measure:

Number and percent of HCBS providers who meet training requirements for delivering HCBS services.

New proposed measure:

Number and percent of HCBS required trainings completed by providers.

Current measure:

Number and/or percent of claims verified through the HHSC compliance audit to have paid in accordance with the participant's IRP.

New proposed measure:

Number and percent of paid claims that reflect only the services listed in accordance with the participant's IRP.

Copy of Proposed Amendment(s):

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shae James, State Plan Coordinator/Tribal Liaison, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711 and by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of the Texas Health and Human Services Commission (which were formerly the local offices of the Department of Aging and Disability Services).

TRD-202104996
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 10, 2021

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Public Notice - Texas State Plan for Medical Assistance Amendment Effective December 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 21-0049 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the proposed amendment is to specify the mechanism that HHSC will use to ensure certain statutory minimum requirements for non-emergency medical transportation (NEMT) providers and drivers are satisfied. The proposed amendment implements Section 1902(a)(87) of the Social Security Act.

The proposed amendment is estimated to have no fiscal impact. The requested effective date for the proposed amendment is December 1, 2021.

Copy of Proposed Amendment. Interested parties may obtain a copy of the proposed amendment and/or additional information about the amendment by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of the Texas Health and Human Services Commission (which were formerly the local offices of the Department of Aging and Disability Services).

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax or email:

U.S. Mail:

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery:

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax: Attention: Rate Analysis at (512) 730-7475

Email: RAD-LTSS@hhsc.state.tx.us

TRD-202104947
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 8, 2021

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) Release for 2022 Community Services Block Grant Discretionary (CSBG-D) Funds - Native American and Migrant Seasonal Farm Worker Education and Employment Initiatives

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $300,000 in CSBG-D funding for education and employment initiatives for migrant seasonal farm worker and Native American populations. Each year the Department sets aside 5% of its annual CSBG allocation for state discretionary use. Each year funds from CSBG-D are used for specific identified efforts that the Department supports and other ongoing initiatives such as employment and education programs for migrant and seasonal farm workers and Native Americans. This year, $300,000 has been programmed for migrant and seasonal farm worker and Native American populations' employment and education programs for which the Department is issuing this NOFA. The Department will release funds competitively.

The Department's anticipated contract period for 2022 CSBG-D migrant and seasonal farm worker and Native American employment and education initiatives is March 1, 2022, through February 28, 2023.

Interested applicants must meet the requirements set forth in the application and must submit a complete application through the established system described in the NOFA by Friday, January 7, 2022, 5:00 p.m., Austin local time.

The application forms contained in this packet and submission instructions are available on the Department's web site at http://www.tdhca.state.tx.us/nofa.htm. Should you have any related questions, please contact Rita Gonzales-Garza at (512) 475-3905 or rita.garza@tdhca.state.tx.us.

TRD-202105003
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 13, 2021

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Texas Department of Insurance

Company Licensing

Application by Lasso Healthcare Insurance Company, a domestic life, health and/or accident company with HMO authority, to add DBA (doing business as) Lasso Healthcare.

Application to do business in the state of Texas for Safe Harbor Insurance Company, a foreign fire and/or casualty company. The home office is in Tallahassee, Florida.

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 John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202105084
James Person
General Counsel
Texas Department of Insurance
Filed: December 15, 2021

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Request for Drainage Easement - Orange County

Approximately 20 Acres at the Lower Neches Wildlife Management Area

In a meeting on January 27, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the grant of a drainage easement to the Orange County Drainage District of approximately 20 acres at the Lower Neches Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission meeting.

Exchange of Land - Parker County

Approximately 12 Acres at Lake Mineral Wells State Park and Trailway

In a meeting on January 27, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the exchange of land with the city of Mineral Wells of approximately 12 acres at Lake Mineral Wells State Park and Trailway. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Visit the TPWD website at tpwd.texas.gov for the latest information regarding the Commission meeting.

Exchange of Land - Somervell County

Approximately 0.2 Acres at Dinosaur Valley State Park

In a meeting on January 27, 2022, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the exchange of land with an adjacent landowner of approximately 0.2 acres at Dinosaur Valley State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov.

** Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.*

TRD-202105085
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: December 15, 2021

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Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §13.064, the Office of Public Utility Counsel (OPUC) will conduct its annual public hearing in person, virtually and via toll-free conference call.

December 31, 2021 from 11:00 a.m. - 12:00 p.m.

Join via Microsoft Teams Live Event Meeting:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2Fl%2Fmeetup-join%2F19%3Ameeting_Mzc1NWFhMmItYjUz-My00NTA3LWJlN2YtY2E4YTM4ODE1MWJj%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%25228ab1207e-27c0-403f-92a7-fff564f962dd%2522%252c%2522Oid%2522%253a%2522e8914302-f6bd-478c-839a-16628438cb7f%2522%257d%26CT%3D-1639499215641%26OR%3DOutlook-Body%26CID%3D68A66827-0B95-4D2E-B387-F650A0819A7D%26anon%3Dtrue&type=meetup-join&deeplinkId=efdf4fdb-1919-49ae-b8e9-545db35480af&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

or

Join via Toll-Free Conference Call:

Toll-Free Conference Bridge (877) 226-9790, Passcode: 7098100

or

Attend in person:

William B. Travis Building

1701 N. Congress Avenue, Meeting Room 1-100

Austin, Texas 78701

OPUC represents residential and small commercial consumers, as a class, in the electric, water, wastewater, and telecommunications utility industries in Texas. OPUC primarily represents these consumers before the Public Utility Commission of Texas, State Office of Administrative Hearings, state courts and Electric Reliability Council of Texas.

The hearing is open to the public. All interested persons are invited to attend and provide input on OPUC's priorities, functions, and effectiveness.

For additional information, please contact Matthew Cooksey, Government Relations Specialist, at P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or 1-(877)-839-0363 or email: *opuc_customer@opuc.texas.gov.*

TRD-202105077
Chris Ekoh
Interim Public Counsel
Office of Public Utility Counsel
Filed: December 14, 2021

♦ ♦ ♦

Supreme Court of Texas

Preliminary Approval of Amendments to Texas Rules of Civil Procedure 306a, 503, 505, 508, 509, 510, 663a, and 664a; of Texas Rules of Civil Procedure 679a and 679b; and of a Form Seizure Exemption Notice, Instructions for Seizure Exemption

Claim Form, Seizure Exemption Claim Form, and Order Appointing Receiver

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the December 24, 2021, issue of the Texas Register.)

TRD-202104948
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: December 8, 2021

♦ ♦ ♦

Texas Water Development Board

REVISED Agricultural Conservation Request for Applications

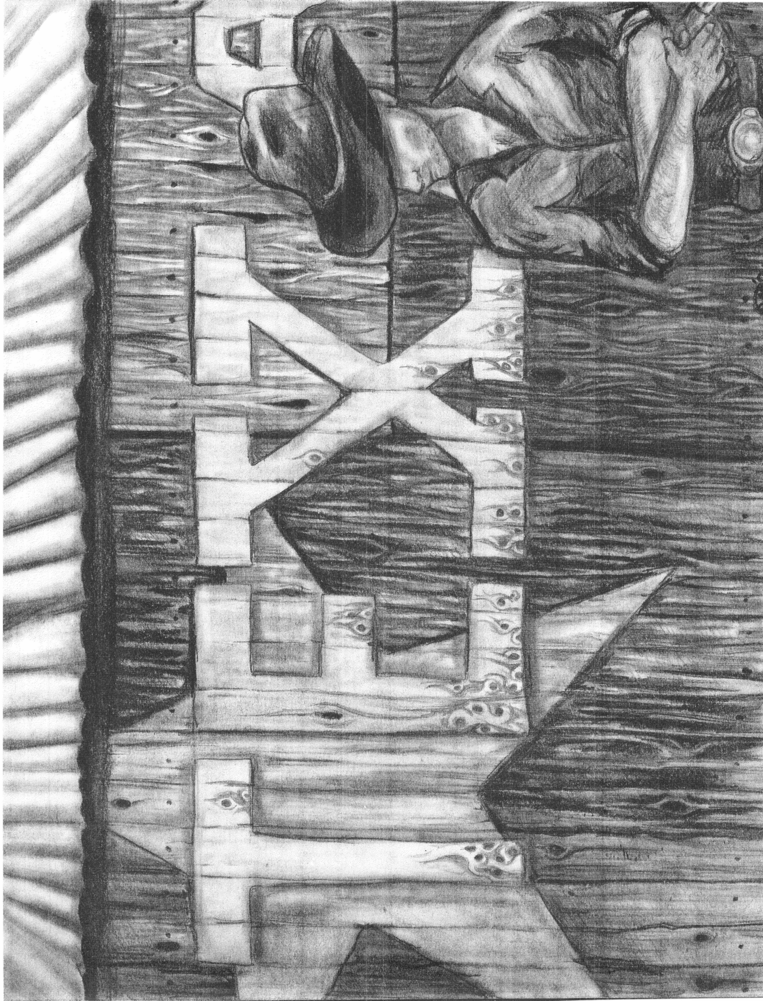
This is a re-posting for the Fiscal Year 2022 Texas Water Development Board's Agricultural Water Conservation Grants. The Texas Water Development Board (TWDB) is allocating $1.2 million in grant funds for the 2022 Fiscal Year through the Agricultural Water Conservation Program. Applications are due on February 9, 2022, at 2:00 p.m. The Agricultural Water Conservation Grants provide funds to political subdivisions to implement and promote water conservation strategies identified in the State and Regional Water Plans.

Applications should be submitted to Bid-room@twdb.texas.gov with the subject line of "FY 22 Ag Grant App, [Entity Name], [Amount]." The solicitation and application instructions are listed on TWDB's website at http://www.twdb.texas.gov/about/contract_admin/request/.

For more information about the Agricultural Water Conservation Grants Program, contact Kyla Peterson, Team Lead, Agricultural Water Conservation, at (512) 475-1525 or e-mail at kyla.peterson@twdb.texas.gov.

TRD-202105012
Ashley Harden
General Counsel
Texas Water Development Board
Filed: December 15, 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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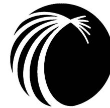

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