TEXAS REGISTER

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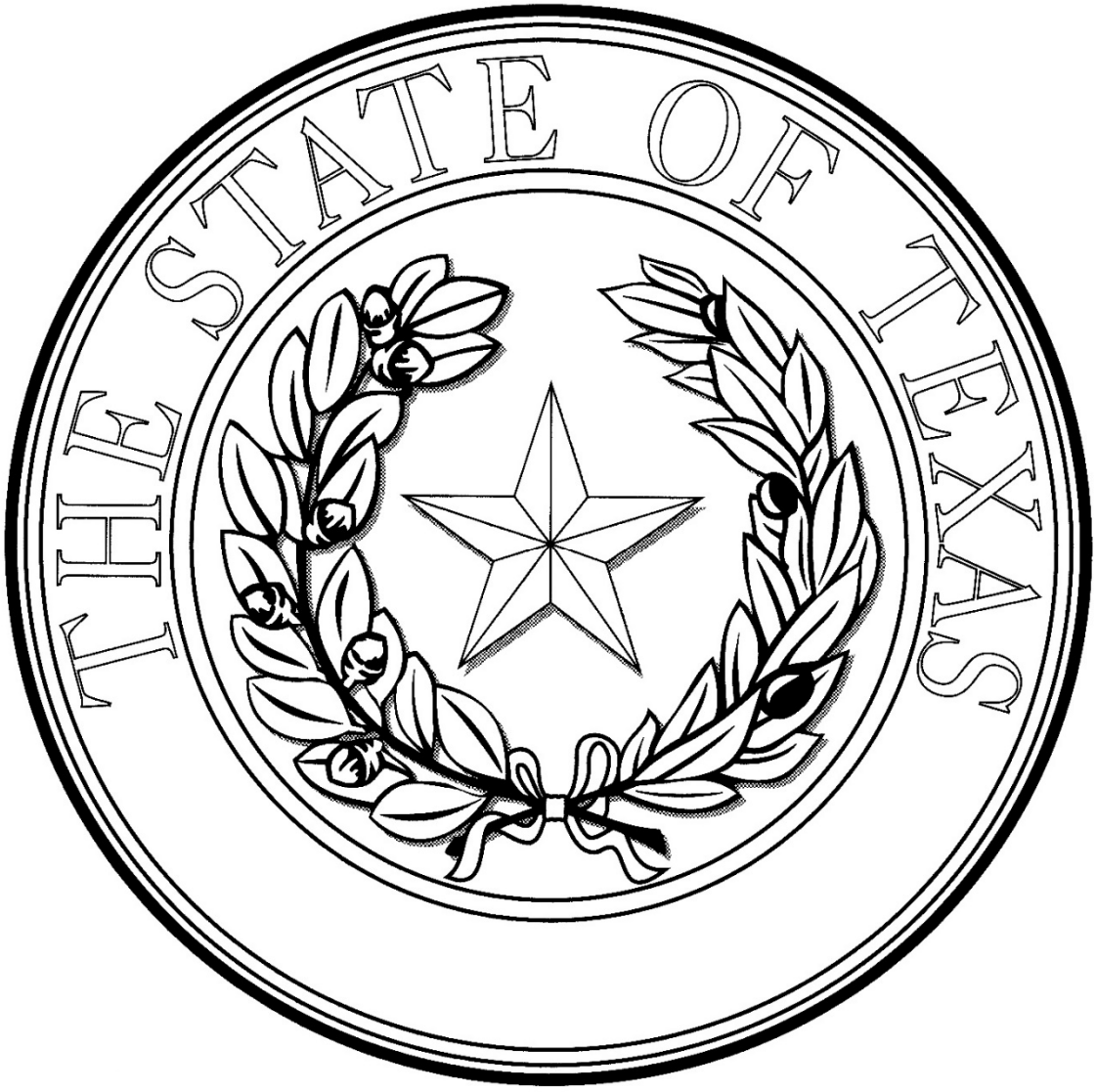

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In This Issue

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 February 17, 2022

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2023, Roland L. Brown of Midlothian, Texas (Mr. Brown is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2023, Otis W. Jones, Jr. of Houston, Texas (Mr. Jones is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2023, Binoy J. Kurien of Pearland, Texas (Mr. Kurien is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2023, Edward E. "Eddie" Martin, Jr. of Austin, Texas (Mr. Martin is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2023, Scott A. McDonald of Keller, Texas (Mr. McDonald is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2023, Stephen C. Shang of Austin, Texas. (Mr. Shang is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2024, Suzanne R. Arnold of Garland, Texas (Ms. Arnold is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2024, Janet M. Hoffman of Galveston, Texas (Ms. Hoffman is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2024, Edwin O. "Scooter" Lofton, Jr. of Horseshoe Bay, Texas (Mr. Lofton is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2024, Carroll L. Pruitt of Azle, Texas (replacing Marcela A. Rhoads of Dallas, whose term expired).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2024, John D. "Johnny" Scholl, III of Claude, Texas (Mr. Scholl is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2024, William F. "Dubb" Smith, III of Dripping Springs, Texas (Mr. Smith is being reappointed).

Appointments for February 18, 2022

Appointed pursuant to SB 52, 87th Legislature, Third Called Session, to the Capital Project Oversight Advisory Commission for a term to expire at the pleasure of the Governor, Phillip D. "Phil" Adams of Bryan, Texas (Mr. Adams will serve as chair of the commission).

Appointments for February 22, 2022

Appointed to the Texas Facilities Commission for a term to expire January 31, 2027, Lawrence B. "Larry" Long of Dallas, Texas (replacing Patti C. Jones of Lubbock, whose term expired).

Appointed as Presiding Judge of the Tenth Administrative Judicial Region for a term to expire four years from the date of qualification, Fredrick "Alfonso" Charles of Longview, Texas (Judge Charles is being reappointed).

Greg Abbott, Governor

TRD-202200654

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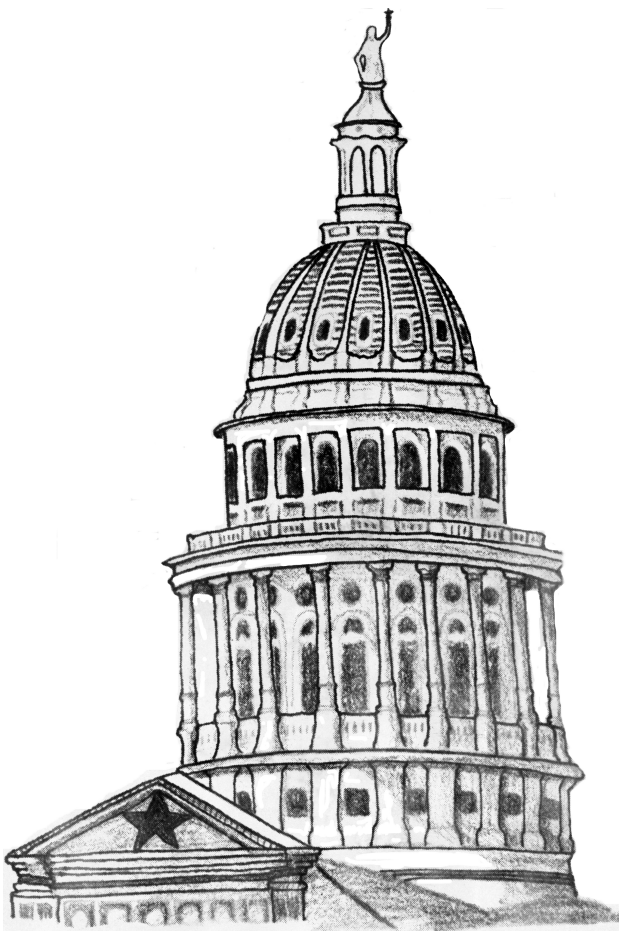

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0447-KP

Requestor:

The Honorable Dee Hobbs

Williamson County Attorney

405 M.L.K. Street, #7

Georgetown, Texas 78626

Re: Meaning of the term "salary" as used in article 16, section 40, of the Texas Constitution (RQ-0447-KP)

Briefs requested by March 21, 2022

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

TRD-202200631

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 22, 2022

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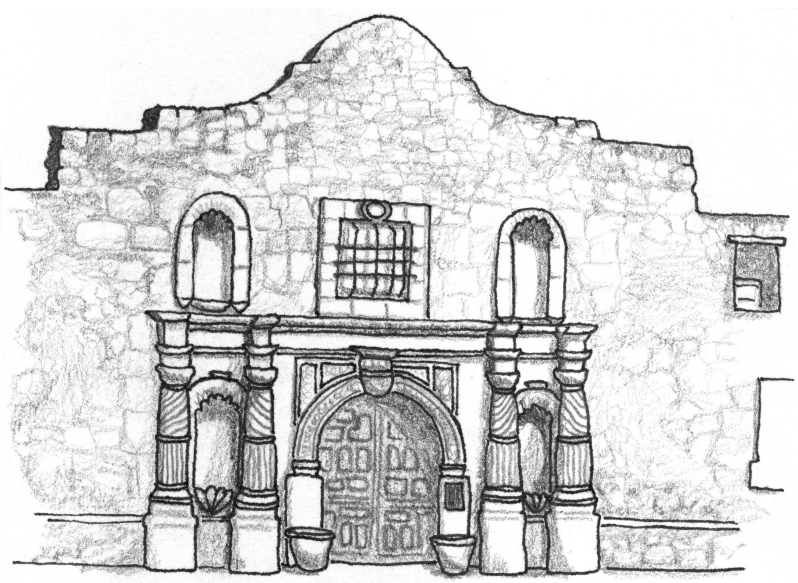

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law,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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.47

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

BACKGROUND AND PURPOSE

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

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

STATUTORY AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) PPE--Personal protective equipment.

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

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

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

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

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

(A) is a new admission or readmission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) infection control precautions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) An intermediate care facility must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The intermediate care facility must:

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

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

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

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

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

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

Filed with the Office of the Secretary of State on February 16, 2022.

TRD-202200572
Nycia Deal
Director of Legal Services Division
Health and Human Services Commission
Effective date: February 17, 2022
Expiration date: June 16, 2022
For further information, please call: (512) 438-3161

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

26 TAC §553.2003

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, Subchapter K, COVID-19 Emergency Rule, new §553.2003, concerning an emergency rule in response to COVID-19 describing requirements for visitation in a facility. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to govern visitation in an assisted living facility. The purpose of the new rule is to describe the requirements related to such visits.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §§247.025 and 247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by HHSC. Texas Health and Safety Code §§247.025 and 247.026 require the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 247 and to adopt rules prescribing minimum standards to protect the health and safety of assisted living facility residents.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2003. Assisted Living Facility COVID-19 Response--Expansion of Reopening Visitation.

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

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

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

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

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

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

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

(7) Fully-vaccinated resident--A resident who received the second dose in a two-dose series or a single dose of a one dose COVID-19 vaccine.

(8) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid or unpaid staff who have been present in the facility in the last 14 days.

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

(10) Persons with legal authority to enter--Law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

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

(12) PPE--Personal protective equipment.

(13) Providers of essential services--Contract doctors or nurses, home health and hospice workers, health care professionals, contract professionals, and clergy members and spiritual counselors, whose services are necessary to ensure resident health and safety.

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

(A) is a new admission or readmission;

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

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

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

(c) Visitors must be screened in accordance with HHSC guidance.

(d) An assisted living facility must allow persons providing critical assistance, including essential caregivers, and persons with legal authority to enter the facility and visitors conducting end-of-life visits, if he or she passes the screening described in subsection (c) of this section.

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

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

(g) The facility must allow all visits, as required in this section. If a facility fails to comply with the requirements of this subsection, HHSC may take action in accordance with Subchapter H of this chapter (relating to Enforcement).

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

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

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

(C) To permit visitation, an assisted living facility must have separate areas, which include enclosed rooms such as bedrooms, or activities rooms, units, wings, halls, or buildings, designated for COVID-19 positive, COVID-19 negative, and unknown COVID-19 status resident cohorts.

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

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

(ii) infection control precautions; and

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

(E) The facility must ensure infection control protocols are followed. An assisted living facility may schedule personal visits in advance or permit personal visits that are not scheduled in advance. Scheduling in advance must not be so restrictive as to prohibit or limit visitation for residents.

(F) The facility may cancel the visit if the visitor fails to comply with the requirements in subparagraph (L) of this paragraph.

(G) All visits are allowed for residents with any COVID-19 status.

(H) All visits may include close or personal contact with the resident being visited, in accordance with CDC guidance. The visitor must maintain physical distancing between themselves and other residents and staff in the facility.

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

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

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

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

(M) The visit may occur in the location of a resident's choice of designated visitation area which may include the resident's bedroom, outdoors, or in another area in the facility that limits the visitor movement through the facility and interaction with other residents and staff.

(N) An assisted living facility must prevent visitation by a visitor, including an essential caregiver visitor if he or she has signs and symptoms of COVID-19 or an active COVID-19 infection.

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

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

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

(C) Documentation of the identity of each essential caregiver must be included in the resident's record.

(D) The facility must develop and enforce essential caregiver visitation policies and procedures which include a written agreement that the essential caregiver understands and agrees to follow the applicable policies, procedures and requirements.

(E) The facility may revoke the essential caregiver's designation status if he or she fails to comply with the written agreement described by subparagraph (D) of this paragraph.

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

Filed with the Office of the Secretary of State on February 16, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

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

26 TAC §558.950

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

BACKGROUND AND PURPOSE

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

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

STATUTORY AUTHORITY

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

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

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

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

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

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

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

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

(5) Essential caregiver visit--A personal visit between a client and an essential caregiver. An essential caregiver visit is per-

mitted in all hospice inpatient units for all clients with any COVID-19 status.

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

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

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

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

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

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

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

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

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

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

(16) PPE--Personal protective equipment.

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

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

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

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

(A) is a new admission or readmission;

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

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

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

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

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

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

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

(3) any other signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at cdc.gov;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) infection control precautions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) A hospice agency must:

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

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

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

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

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

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

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

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

(2) the salon services visitor agrees to comply with the most current version of the Minimum Standard Health Protocols -

Checklist for Cosmetology Salons/Hair Salons, located on the website: open.texas.gov; and

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

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

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

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

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

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

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

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

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

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

(5) The hospice agency must:

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The family education visitor must:

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

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

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

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

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

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

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

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Karen Ray
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Health and Human Services Commission
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

40 TAC §9.198, §9.199

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Part 1, Texas Administrative Code, Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, new §9.198 and §9.199, concerning emergency rules in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect individuals receiving HCS and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rules to reduce the risk of spreading COVID-19 to individuals in the HCS program. These new rules describe the requirements HCS program providers must immediately put into place and follow for infection control, visitation, and essential caregivers.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034, 531.0055, and 531.021, and Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021 provides HHSC with the authority to administer federal Medicaid 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 provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections implement Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code §32.021.

§9.198. Program Provider Response to COVID-19 Emergency Rule.

(a) Applicability. Based on state law and federal guidance, Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a program provider to take the following measures. The screening required by this section does not apply to emergency services personnel entering the residence in an emergency situation.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

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

(2) Individual--A person enrolled in the Home and Community-based Services (HCS) program.

(3) Isolation--Practices that separate persons who are sick to protect those who are not sick.

(4) Persons providing critical assistance--Providers of essential services, persons with legal authority to enter, and family members or friends of individuals at the end of life and designated essential caregivers as described in §9.199(f) of this subchapter (relating to HCS Provider Response to COVID-19-Expansion of Reopening Visitation).

(5) Persons with legal authority to enter--Law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

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

(7) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

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

(9) Residence--A host home/companion care, three-person, or four-person residence, as defined by the HCS Billing Guidelines, unless otherwise specified.

(c) Screening requirements.

(1) A program provider must screen all visitors and individuals in accordance with HHSC guidance.

(2) Visitors who meet any of the screening criteria must leave the residence and reschedule the visit.

(3) A program provider must allow persons providing critical assistance, including essential caregivers and persons with legal authority, to enter the residence if they pass the screening.

(4) A program provider must not prohibit an individual who lives in the residence from entering the residence, even if the individual meets any of the screening criteria.

(d) Communication.

(1) Program providers must contact their local health department, or the Texas Department of State Health Services (DSHS) if there is no local health department, if the program provider knows an individual has COVID-19.

(2) Within 24 hours of becoming aware of an individual or staff member with confirmed COVID-19, a program provider must notify HHSC via encrypted or secure email to waiversurvey.certification@hhsc.state.tx.us. If a program provider is not able to send a secure or encrypted email, the program provider should notify HHSC by emailing waiversurvey.certification@hhsc.state.tx.us. A program provider is not required to provide identifying information of a staff member to HHSC when reporting a positive COVID-19 test result and must comply with applicable law regarding patient privacy. A program provider must comply with any additional HHSC monitoring requests.

(3) A program provider must notify an individual's legally authorized representative (LAR) if the individual is confirmed to have COVID-19, or if the presence of COVID-19 is confirmed in the residence.

(4) A program provider must notify any individual who lives in the residence, and his or her LAR, if the program provider is aware of probable or confirmed cases among program provider staff or individuals living in the same residence.

(5) A program provider must not release personally identifying information regarding confirmed or probable cases.

(e) Infection Control.

(1) A program provider must develop and implement an infection control policy to prevent the spread of COVID-19 that:

(A) prescribes a cleaning and disinfecting schedule for the residence, including high-touch areas and any equipment used to care for more than one individual;

(B) is updated to reflect current CDC or DSHS guidance;

(C) may include the use of face masks; and

(D) is revised if a shortcoming is identified.

(2) A program provider must provide training to service providers on the infection control policy initially and upon updates.

(3) A program provider must educate staff and individuals on infection prevention, including hand hygiene, physical distancing, the use of personal protective equipment (PPE) and cloth face coverings, and cough etiquette.

(4) A program provider must encourage physical distancing according to CDC guidance in the community whenever reasonably possible.

(5) A program provider must require staff to:

(A) wear appropriate PPE as defined by the CDC if providing care to an individual with COVID-19; and

(B) maintain physical distance according to CDC guidance as practicable.

(6) Provider staff who have confirmed or probable COVID-19 may not provide services to individuals, except that:

(A) a host home/companion care provider may provide services to an individual who has also tested positive for COVID-19; or

(B) live-in staff providing supervised living services may provide services to an individual who has also tested positive for COVID-19 in accordance with §9.174(a)(37) of this subchapter (relating to Certification Principles: Service Delivery).

(7) A program provider must monitor the health status of a staff person providing services under paragraph (6) of this subsection to verify that the staff person continues to be able to deliver services. If the staff person's condition worsens, the program provider must activate the service back-up plan to ensure the individual receives services.

(8) A program provider must isolate individuals with confirmed or probable COVID-19 in accordance with CDC guidance. The program provider should isolate the individual within the residence, if possible. If individuals cannot be isolated within the residence, the program provider must convene the service planning team to identify alternative residential arrangements.

(9) A program provider must screen individuals once a day in accordance with HHSC guidance.

(f) A program provider must update the emergency plan developed in accordance with §9.178(d) of this subchapter (relating to Certification Principles: Quality Assurance) to address COVID-19. The updated plan must include:

(1) plans for maintaining infection control procedures and supplies of PPE during evacuation;

(2) a list of locations and alternate locations for evacuation both for individuals with confirmed or probable COVID-19 and for individuals with negative or unknown COVID-19 status; and

(3) a list of supplies needed if required to shelter in place, including PPE.

(g) A program provider must develop and implement a staffing policy that addresses how the program provider plans to minimize the movement of staff between health care providers and encourage communication among providers regarding COVID-19 probable and confirmed cases. The policy must limit sharing of staff between residences, unless doing so will result in staff shortages.

(h) Except as provided in subsection (e)(6) of this section, if a service provider at a host home, three-person or four-person home, or a staff member at a respite or Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) setting, has confirmed or probable COVID-19, the service provider or staff member must discontinue providing services until eligible to return to work in accordance with the CDC guidance document, "Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19." The program provider must activate the back-up service plan.

(i) A program provider may conduct the annual inspection required by §9.178(c) of this subchapter by video conference. A program provider must conduct an on-site inspection required by §9.178(c) of this subchapter within 30 days of the expiration or repeal of the public health emergency.

(j) A program provider must develop a safety plan for a four-person residence if the annual fire marshal inspection required by §9.178(e)(3)(A) of this subchapter is expired, and the program provider must document attempts to obtain the fire marshal inspection. The safety plan should require:

(1) verification that fire extinguishers are fully charged;

(2) a schedule for fire watches and plan to increase fire drills if the residence does not have a sprinkler system installed or monitored fire panel;

(3) verification of staff training on the needs of the individual in the event of an emergency; and

(4) verification that emergency plans are updated to reflect needs as listed in paragraph (3) of this subsection.

(k) Flexibilities in federal requirements granted by the Centers for Medicare and Medicaid Services during the COVID-19 pandemic, including waivers under the Social Security Act §1135, activation of Appendix K amending a 1915(c) home and community-based waiver, and other federal flexibilities or waivers are applied to corresponding state certification principles for HCS. HHSC will identify and describe federal flexibilities and flexibility in corresponding state certification principles in guidance issued through HCS provider letters.

(l) If this emergency rule is more restrictive than any minimum standard relating to the HCS program, this emergency rule will prevail so long as this emergency rule is in effect.

§9.199. HCS Provider Response to COVID-19 Expansion of Reopening Visitation.

(a) Applicability. This section does not apply to host home/companion care, unless otherwise specified.

(b) Definitions. The following words and terms, when used in this section, have the following meanings.

(1) COVID-19 negative--The status of an individual who has either tested negative for COVID-19 or who exhibits no symptoms of COVID-19 and has had no known exposure to the virus in the last 14 days.

(2) COVID-19 positive--The status of an individual who has tested positive for COVID-19 or who is presumed positive for COVID-19 and who has not yet met the Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

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

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

(5) Essential caregiver visit--A personal visit between an individual and an essential caregiver as described in subsection (f)(1) of this section. An essential caregiver visit is permitted for all individuals with any COVID-19 status.

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

(7) Individual--A person enrolled in the Home and Community-based Services (HCS) program.

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

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

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

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

(12) Probable case of COVID-19--A case that meets the clinical criteria for epidemiologic evidence as defined and posted by the Council of State and Territorial Epidemiologists.

(13) Unknown COVID-19 status--The status of a person, except as provided by the CDC for individuals who are fully vaccinated for COVID-19 or recovered from COVID-19, who:

(A) is a new admission or readmission;

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

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

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

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

(d) The program provider must develop and enforce policies and procedures that ensure infection control practices for visitors, including whether the visitor and the individual must wear a face mask or face covering and whether the visitor should wear appropriate personal protective equipment (PPE).

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

(f) The program provider must allow essential caregiver visits, end-of-life visits, indoor visits, and outdoor visits as required in this section. If a program provider fails to comply with the requirements of this section, the Texas Health and Human Services Commission (HHSC) may take action in accordance with §9.171 of this subchapter (relating to HHSC Surveys and Residential Visits of a Program Provider) and §9.181 of this subchapter (relating to Administrative Penalties).

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

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

(B) Except as provided in subparagraph (C) of this paragraph, indoor visits and outdoor visits are permitted only for individuals with a COVID-19 negative status.

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

(D) Except as provided in subparagraph (E) of this paragraph, the individual and their personal visitor may have close or personal contact in accordance with CDC guidance. The visitor must maintain physical distancing of at least six feet between themselves and all other persons in the residence.

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

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

(G) A program provider must ensure equal access by all individuals to visitors and essential caregivers.

(H) A program provider must allow visitors of any age.

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

(J) A program provider must inform visitors of the provider's infection control policies and procedures related to visitation.

(K) A program provider must provide hand washing stations, or hand sanitizer, to the visitor and individual before and after visits.

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

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

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

(B) Up to two essential caregiver visitors may visit an individual at the same time.

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

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

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

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

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

(iii) limiting visitation to the area designated by the program provider in accordance with subparagraph (C) of this paragraph.

(F) The program provider must:

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on February 16, 2022.

TRD-202200558
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: February 17, 2022
Expiration date: June 16, 2022
For further information, please call: (512) 438-3161

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TEXAS
Lone Star State

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 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, 33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.7, concerning how to obtain an exemption from licensing related to exchanging currency in connection with retail, wholesale or service transactions; §33.23, concerning additional provisions that apply to permissible investments; §33.27, concerning fees to obtain and maintain a license; §33.33, concerning receipts issued relating to currency exchange transactions; §33.37, concerning receipts issued relating to money transmission transactions; §33.51, concerning providing information to customers on how to file a complaint; and, §33.54, concerning an exemption from licensure for securities dealers and agents. The amended rules arise from rule review conducted pursuant to Texas Government Code §2001.039 and are proposed to provide clarity, correct statutory citations and certain scrivener's errors, and maintain consistent formatting within the chapter.

Section 33.7 discusses how a person can obtain an exemption from licensing if they exchange currency in connection with retail, wholesale or service transactions. Section 33.7 as amended corrects the formatting and language to mirror Texas Finance Code §151.502(d).

Section 33.23 discusses the permissible investment requirement for a money transmitter under §151.309 of the Texas Finance Code. Section 33.23 as amended revises the reference to the Texas Finance Code in subsection (f) in order to ensure consistent formatting with the rest of Chapter 33.

Section 33.27 explains what fees must be paid to get and maintain a license. Section 33.27 as amended clarifies how annual assessment fees are calculated and maintains consistent formatting with the rest of Chapter 33.

Section 33.33 pertains to what receipts must be issued relating to currency exchange transactions. Section 33.33 as amended corrects the citations to 31 C.F.R. §§1010.100(t) and 1010.100(ff).

Section 33.37 pertains to what receipts must be issued relating to money transmission transactions. Section 33.37 as amended maintains consistent formatting with the rest of Chapter 33 and removes the reference to Texas Finance Code §278.053 as the statute was repealed.

Section 33.51 addresses when and how a money services business must provide customers with the information necessary to file a complaint with the department. Section 33.51 as amended maintains consistency with the rest of Chapter 33.

Section 33.54 provides an exemption for licensure for registered securities dealers and agents. Section 33.54 as amended revises the reference to the Texas Finance Code in subsection (b)(2) in order to ensure consistent formatting with the rest of Chapter 33.

Jesus Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the proposed rules.

Director Saucillo also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

-- create or eliminate a government program;

-- require the creation of new employee positions or the elimination of existing employee positions;

-- require an increase or decrease in future legislative appropriations to the agency;

-- require an increase or decrease in fees paid to the agency;

-- create a new regulation;

-- expand, limit or repeal an existing regulation;

-- increase or decrease the number of individuals subject to the rule's applicability; and

-- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposals must be submitted no later than 5:00 p.m., on April 5, 2022. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 151.

No statute, article or code is affected by the proposed amended sections.

§33.7. How Do I Obtain an Exemption from Licensing Because I Exchange Currency in Connection with Retail, Wholesale or Service Transactions?

(a) Does this section apply to me?

(1) This section applies if you are a retailer, wholesaler, or service provider and in the ordinary course of business:

(A) accept the currency of a foreign country or government as payment for your goods or services;

(B) in connection with the transaction, make or give change in the currency of a different foreign country or government; and

(C) qualify for an exemption under Finance Code, §151.502(d).

(2) (No change.)

(b) To request an exemption, you must submit a letter to the commissioner that fully explains your business and is accompanied by a statement, signed and sworn to before a notary, affirming that none of the disqualifying conditions set out in Finance Code, §151.502(d)(1) - (5), apply to you. For purposes of subsection (d)(4) of this section regarding disqualification [~~the subsection (d)(4) disqualification~~], you are considered to be engaged in the "business of cashing checks, drafts or other payment [~~monetary~~] instruments" if, in the 12 month period immediately preceding the filing of the application for exemption, you derived more than 1.00% of your gross receipts, directly or indirectly, from fees or other consideration you charged, earned, or imputed from cashing checks, drafts or other monetary instruments.

(c) - (d) (No change.)

§33.23. What Additional Provisions Apply to Permissible Investments?

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

(f) For the purpose of satisfying a license holder's permissible investments requirement under Finance Code, [~~Tex. Fin. Code Ann.~~] §151.309, the Department interprets "cash in demand or interest-bearing accounts with a federally insured depository institution" to include funds held by a license holder's depository institution after being withdrawn from the license holder's account for transmission to satisfy the license holder's outstanding money transmission obligation.

(g) - (k) (No change.)

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a) (No change.)

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

(1) "Annual Assessment" means [~~--~~] the fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 151, including the annual license fee required by Finance Code, §151.207(b)(1).

(2) "Examination" means [~~--~~] the process, either by on-site or off-site review, of evaluating the books and records of a license holder under the authority of Finance Code, §151.601, relating to its money services activities. For purposes of this section, the term does not include an investigation conducted under the authority of Finance Code, §151.104, §151.305, or §151.505.

(c) - (d) (No change.)

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and/or [~~and or~~] currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:
Figure: 7 TAC §33.27(e)(1)
[~~Figure: 7 TAC §33.27(e)(1)~~]

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:
Figure: 7 TAC §33.27(e)(2)
[~~Figure: 7 TAC §33.27(e)(2)~~]

(3) (No change.)

(f) - (h) (No change.)

(i) How and when do I need to pay for the fees required by this section?

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

(4) You must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice. [~~You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.~~]

(5) You must pay the filing fees required by subsection (g) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice. [~~You or another person must pay the investigation fee required under subsection (f) of this section within 10 days of receipt of the department's written invoice.~~]

(6) - (8) (No change.)

(j) (No change.)

§33.33. What Receipts Must I Issue Related to Currency Exchange Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the currency exchange transactions I conduct?

(1) For purposes of this section, "receipt" means a receipt, electronic record, or other written confirmation.

(2) (No change.)

(3) With respect to a currency exchange transaction you conduct with another financial institution as that term is defined in 31 C.F.R. §1010.100(t) [~~§1010.100(n)~~] or with a financial institution located outside the United States, you must obtain a contemporaneous receipt for each transaction, regardless of where the transaction is conducted. If the other financial institution is a money services business as that term is defined in 31 C.F.R. §1010.100(ff) [~~§1010.100(uu)~~], or a money services business or financial institution located outside the United States, the receipt must contain:

(A) the date and amount of the transaction;

(B) the currency names and total amount of each currency;

(C) the rate of exchange;

(D) the name and address of the money services business issuing the receipt; and

(E) information sufficient to identify the employee or representative who conducts the transaction for the entity issuing the receipt, such as initials, unique employee or representative code, or other appropriate identifier.

§33.37. What Receipts Must I Issue Related to Money Transmission Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the money transmission transactions I conduct?

(1) For purposes of this section "receipt" means a receipt, electronic record, or other written confirmation. If the customer conducts the transaction online or electronically, the term includes a means by which the customer can save or print a receipt or other record of the transaction that contains the information required under this section.

(2) - (3) (No change.)

(4) With respect to a currency transmission transaction subject to Finance Code, Chapter 278, you must provide the receipt required under Finance Code, §278.051 [~~and §278.053, as applicable~~]. The information required under those sections may be included on the receipt required under paragraph (2) of this subsection.

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

(a) (No change.)

(b) Definitions. Words used in this section that are defined in Finance Code, Chapter 151, have the same meaning as defined in the Finance Code. The following words and terms, when used in this section, shall have the following meanings, unless the text clearly indicates otherwise.

(1) "Conspicuously posted" means displayed [~~Conspicuously posted - Displayed~~] so that a customer with 20/20 vision can read it from the place where he or she would typically conduct business with you or, alternatively, on a bulletin board, in plain view, on which you post notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.).

(2) "Customer" means, as to money transmission or currency exchange, [~~Customer -- As to money transmission or currency exchange, "customer" means~~] any Texas resident to whom, either directly or through an authorized delegate, you provide or have provided money transmission or currency exchange products or services or for whom you conduct or have conducted a money transmission or currency exchange transaction.

(3) "Privacy notice" means any [~~Privacy notice -- Any~~] notice regarding a person's right to privacy that you are required to give under a specific state or federal law.

(4) "Required notice" means the [~~Required notice -- The~~] notice described in subsection (d) of this section.

(c) - (h) (No change.)

§33.54. Exemption for Registered Securities Dealers and Agents.

(a) (No change.)

(b) A dealer or dealer agent who, in the course of providing dealer or dealer agent services as to securities, receives or has control over a customer's money or monetary value, need not obtain a money transmission license if he or she is [~~they are~~]:

(1) (No change.)

(2) only conducting money transmission as defined by [~~Texas~~] Finance Code, §151.301, to the extent reasonable and necessary to provide dealer or dealer agent services for contractual customers as to securities.

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 February 18, 2022.

TRD-202200604
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 475-1301

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) proposes amendments to §83.101 (relating to Purpose and Scope), §83.205 (relating to Loans by Mail and Internet), §83.301 (relating to Definitions), §83.308 (relating to Relocation), §83.404 (relating to Denial, Suspension, or Revocation Based on Criminal History), §83.504 (relating to Default Charges), §83.602 (relating to Default Charges), §83.703 (relating to Default Charges), and §83.834 (relating to Unclaimed Funds) in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders. In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In November 2021, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 83, Subchapter A was published in the *Texas Register* on December 3, 2021, (46 TexReg 8261). The commission received two official comments in response to that notice. Both of these official comments deal with whether the commission should amend the maximum administrative fee in §83.503 (relating to Administrative Fee). The OCCC intends to study this issue further.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a

stakeholder webinar regarding the rule changes. The OCCC received five precomments on the rule text draft. The five precomments deal with whether the commission should amend the maximum administrative fee in §83.503. The OCCC intends to study this issue further.

Proposed amendments to §83.101 would ensure that language about the scope of the rules is consistent with amendments in HB 1442, which the Texas Legislature passed in 2019. HB 1442 amended Texas Finance Code, §342.005 to state that Chapter 342 applies to a consumer loan made to a person who is located in Texas at the time the loan is made. To be consistent with this statutory amendment, the proposal would add the phrase "to a person located in Texas at the time the loan is made" in subsection (b)(1)(B). The proposal would also remove the phrase "or secured by a lien on real estate" in subsection (b)(1)(C)(i). This phrase is unnecessary, because subsection (b)(1)(C)(ii) specifies that the rules apply to a secondary mortgage loan, which is the type of real-estate-secured loan that is subject to Chapter 342 (and therefore subject to the rules).

Proposed amendments to §83.205 would ensure that language about online loans is consistent with amendments in HB 1442 (2019). HB 1442 added the words "or online" to Texas Finance Code, §342.053(b), which deals with loans by mail. As a result of the amendment, Texas Finance Code, §342.053(b) now states: "A lender may make, negotiate, arrange, and collect loans by mail or online from a licensed office." This proposal would add the words "or online" in §83.205(b) and (c), to use wording that is consistent with the statute. The proposal would remove subsection (d), which currently provides that an internet loan is considered a "loan by mail," because this language would no longer be necessary due to the other changes to §83.205. The proposal would also amend the title of the section to replace "and Internet" with "or Online," to use wording that is consistent with the statute.

Proposed amendments to §83.301 would update the definition of "net assets." The amendment would explain that debt may be subordinated to the net asset requirement under certain conditions. This would ensure consistency with other OCCC rules regarding net assets. This would also ensure consistency with Texas Attorney General Opinion No. DM-332 (1995).

Proposed amendments to §83.308 relate to notifying debtors when a licensed lender relocates. Currently, §83.308(b) requires licensees to mail a notice to all debtors before relocation of an office. A proposed amendment to §83.308(b) explains that a licensee may send this notice by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. The commission believes that this change will improve licensees' ability to use electronic communication to ensure compliance. This change responds to an informal comment that proposed revising this subsection to allow electronic notice.

Proposed amendments to §83.404 relate to the OCCC's review of the criminal history of a regulated lender applicant or licensee. The OCCC is authorized to review criminal history of regulated lender applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §83.404 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §83.404 would implement these statutory changes from HB 1342. Other proposed amendments to §83.404 include technical corrections, clarifying changes, and updates to citations.

Proposed amendments to §83.504, §83.602, and §83.703 would remove references to the Federal Reserve Board's Regulation AA. The Federal Reserve Board repealed this rule in 2016. 81 Fed. Reg. 8133 (Feb. 18, 2016). The proposed amendments to §83.504, §83.602, and §83.703 would maintain current references to the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.4, and therefore would not affect the current prohibition on pyramiding late charges.

Proposed amendments to §83.834(d) would make technical changes relating to the escheat of unclaimed funds. Amended text in this subsection (d) would reflect that unclaimed funds are submitted to the "Unclaimed Property Division" of the Texas Comptroller of Public Accounts. Another proposed amendment would add a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Huffman Lewis, Director of Consumer Protection, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will ensure that licensees may charge a maximum administrative fee that keeps pace with changing costs, will be consistent with legislation recently passed by the legislature, and will better enable licensees to comply with Chapter 342 of the Texas Finance Code.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed,

semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would limit §83.301 by allowing certain subordinated debt to be included in net assets; and would limit current §83.404 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register.* After the 30th day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.101

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.101. Purpose and Scope.

(a) Purpose. The purpose of this subchapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 342.

(b) Scope.

(1) This subchapter applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Texas Finance Code, Chapter 342. As such, this subchapter only applies to lenders and brokers in the business of making, transacting, or negotiating loans that:

(A) contract for, charge, or receive interest in excess of 10% per year;

(B) are loans extended primarily for personal, family, or household use to a person located in Texas at the time the loan is made; and

(C) are either:

(i) unsecured [~~or secured by a lien on real estate~~];

(ii) secured under a secondary mortgage loan; or

(iii) secured by personal property.

(2) This subchapter applies to term loans extended primarily for personal, family, or household purposes.

(3) This subchapter also applies to a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This subchapter does not apply to any loans made under Texas Finance Code, Chapters 301 - 308 or Chapter 339, including commercial and agricultural loans.

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 February 18, 2022.

TRD-202200588
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 936-7660

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DIVISION 2. AUTHORIZED ACTIVITIES

7 TAC §83.205

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.205. Loans by Mail or Online [~~and Internet~~].

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §342.053(b) are to be construed according to the definitions contained in §83.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail or online must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Authorized lenders. The following entities with offices located outside of Texas may make loans by mail or online to Texas residents and are considered to meet the definition of authorized lender as contained in §83.102 of this title (relating to Definitions):

(1) a person who has obtained a regulated loan license from the OCCC;

(2) a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States;

(3) a bank, savings bank, or savings and loan association chartered in another state and insured by the Federal Deposit Insurance Corporation; and

(4) a credit union chartered in another state and insured through the National Credit Union Share Insurance Fund.

[~~(d) Internet loans. For purposes of Texas Finance Code, §342.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."~~]

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. APPLICATION PROCEDURES

7 TAC §83.301, §83.308

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.301. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that the creditor forfeits its security priority and any rights it may have to current assets in the amount of $25,000. Debt subject to such a subordination agreement would not be an applicable liability for purposes of calculating net assets.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:

(A) a proprietor;

(B) general partners;

(C) officers of privately held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 342;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation were privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 342. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability company;

(G) trustees and executors; and

(H) individuals designated as principal parties where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§83.308. Relocation.

(a) Filing requirements. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §83.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office, or of transactions as outlined in subsection (c) of this section, must be mailed to all debtors of record at least five calendar days prior to the date of relocation. A licensee may send notice to a debtor by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. Any licensee failing to give the required notice must waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

(c) Relocation of regulated transactions. If the licensee is only relocating or transferring regulated transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if requested, a list of regulated transactions relocated or transferred. This list of relocated or transferred regulated transactions must include the loan number and the full name of the debtor.

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. LICENSE

7 TAC §83.404

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.404. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

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

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

(D) the relationship of the crime to the ability or [~~,~~] capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee; and [~~.~~]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; [~~and~~]

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) [(F)] evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation. [from one or more of the following:]

[(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]

[(ii) the sheriff or chief of police in the community where the person resides; and]

[(iii) other persons in contact with the convicted person.]

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]

(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4) [§53.021(a)(3)-(4)];

(2) [(3)] errors or incomplete information in the license application;

(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(3); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1) and §342.156.

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. INTEREST CHARGES ON LOANS

7 TAC §83.504

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.504. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a precomputed loan, whether regular or irregular, or on a precomputed loan contracted for on a scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.203 or §342.206.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Chapter 342, Subchapter E loan as authorized under Texas Finance Code, §342.203 or §342.206.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. When any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.203 or §342.206 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable].

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.203(d) or §342.206(b) is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

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DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.602

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.602. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a Texas Finance Code, Chapter 342, Subchapter F precomputed loan to the extent it is authorized by Texas Finance Code, §342.257.

(b) Subchapter F loans less than $100. If the cash advance of the loan is less than $100, an authorized lender may assess, charge, and collect a default charge equal to 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) Subchapter F loans equal to or greater than $100. If the cash advance of the loan is equal to or greater than $100, an authorized lender may contract for a default charge:

(1) that does not exceed 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays; or

(2) that does not exceed 5% of the scheduled installment amount or $10, whichever is greater, if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(d) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(e) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.257 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.257 is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

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. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §83.703

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.703. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a precomputed secondary mortgage loan, whether regular or irregular, or on a secondary mortgage loan that employs the scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.302 or §342.305.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Texas Finance Code, Chapter 342, Subchapter G loan as authorized under Texas Finance Code, §342.302.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. If any payment or partial payment in default is later paid by some form of insurance,

such as credit disability insurance or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed secondary mortgage loan under Texas Finance Code, §342.302 or §342.305 must comply with the prohibition on the pyramiding of late charges provided by the Federal Trade Commission's Credit Practices Rule at 16 C.F.R. §444.4 [~~or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable~~].

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DIVISION 10. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §83.834

The rule changes are proposed under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.834. Unclaimed Funds.

(a) Escheat suspense account. The licensee must transfer any amounts due a borrower not paid within one year, i.e., unclaimed funds, to an escheat suspense account. The transfer must be noted on the account record of the borrower.

(b) Required information. Evidence of a bona fide attempt to pay a refund to a borrower must be kept in the records of the borrower. The licensee must place with the records of the borrower any information received by the licensee that indicates the borrower has died leaving no will or heirs, or has left the community and the borrower's whereabouts are unknown. If deemed necessary with respect to a specific borrower, a licensee may be required to send the unclaimed funds by registered or certified mail to the last known address of the borrower.

(c) Use of unclaimed funds. Use of unclaimed funds within the business until such time as paid to the borrower, to the estate of the borrower, or to the State of Texas is not prohibited; however, funds transferred to an escheat suspense account must not be commingled with the funds of the business.

(d) Escheat to state. At the end of three years, the unclaimed funds must be paid to the State of Texas Comptroller of Public Accounts, Unclaimed Property [~~Treasury~~] Division, as required by Texas Property Code, §72.101 and §74.301, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) Record retention. The records of the escheat suspense account must be retained for a period of 10 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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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1061, §97.1064

The Texas Education Agency (TEA) proposes amendments to §97.1061 and §97.1064, concerning accreditation status, standards, and sanctions. The proposed amendments would reflect the changes established by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1061 outlines requirements for interventions and sanctions if a campus's performance is below any standard.

SB 1365, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), §39.0543 and §39A.065. TEC, §39.0543, defines which performance ratings correlate to acceptable performance, unacceptable performance, and performance that needs improvement. TEC, §39A.065, establishes a requirement for school districts, open-enrollment charter schools, district campuses, or charter school campuses that are assigned a rating of D that qualifies under TEC, §39.0543(b), to develop and implement a local improvement plan. The proposed amendment to §97.1061 would implement the new statutes by adding requirements in proposed new subsection (b) on how schools must develop and keep local improvement plans.

Section 97.1064 outlines requirements for campus turnaround plans if a campus is assigned an unacceptable rating for two consecutive years.

SB 1365 added TEC, §39A.110(c), to allow the commissioner to authorize modification of an approved campus turnaround plan if the commissioner determines that due to a change in circum-

stances occurring after the plan's approval, a modification of the plan is necessary to achieve the plan's objectives. The proposed amendment to §97.1064 would implement TEC, §39A.110(c), by adding new subsection (l) to specify the conditions under which schools can modify turnaround plans with commissioner approval due to having received the Not Rated; Declared State of Disaster rating.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional support, has determined that there are no additional costs to state or local government required to comply with the proposal

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations. The proposed amendments would implement SB 1365, 87th Texas Legislature, Regular Session, 2021, by adding requirements for certain school districts, open-enrollment charter schools, district campuses, and charter school campuses to develop and keep local improvement plans and allow for certain schools to modify turnaround plans with commissioner approval due to having received the Not Rated; Declared State of Disaster rating.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be rule language based on current law and the provision of clarification to school districts on the assignment of accreditation statuses and the applicability of sanctions and any future district ratings on subsequent accreditation status assignments. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins February 25, 2022, and ends March 28, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on February 25, 2022. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §39.0543, as added by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules to evaluate school district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F; TEC, §39A.065, as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules to establish requirements for local improvement plan components and training; and TEC, §39A.110(c), as added by SB 1365, 87th Texas Legislature, Regular Session, 2021, which states that the commissioner may authorize modification of an approved campus turnaround plan if the commissioner determines that due to a change in circumstances occurring after the plan's approval under TEC, §39A.107, a modification of the plan is necessary to achieve the plan's objectives.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§39.0543, 39A.065, and 39A.110(c), as added by Senate Bill 1365, 87th Texas Legislature, Regular Session, 2021.

§97.1061. Interventions and Sanctions for Campuses.

(a) If a campus's performance is below any standard under Texas Education Code (TEC), §39.054(e), the campus shall engage in interventions as described by the Texas Education Agency (TEA).

(b) A school district, open-enrollment charter school, district campus, or charter school campus that is assigned a rating of D that qualifies under TEC, §39.0543(b), shall develop and implement a web-based local improvement plan using the web-based platform provided by TEA. The school district, open-enrollment charter school, district campus, or charter school campus shall:

(1) conduct a data analysis related to areas of low performance;

(2) conduct a needs assessment based on the results of the data analysis, as follows.

(A) The needs assessment shall include a root cause analysis.

(B) Root causes identified through the needs assessment will be addressed in the local improvement plan; and

(3) create a local improvement plan, as follows.

(A) Input must be gathered from the principal; campus-level committee established under TEC, §11.251; parents; and community members, prior to the development of the local improvement plan, using the following steps.

(i) The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

(ii) The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

(iii) All input provided by family and community members should be considered in the development of the final local improvement.

(B) The completed local improvement plan must be presented at a public hearing and approved by the board of trustees.

(c) [~~(b)~~] The commissioner shall assign members to a campus intervention team (CIT) as outlined in §97.1063 of this title (relating to Campus Intervention Team) and TEC, §39A.052.

(d) [~~(c)~~] The campus shall establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan.

(e) [~~(d)~~] The campus intervention team shall:

(1) conduct a data analysis related to areas of low performance;

(2) conduct a needs assessment based on the results of the data analysis, as follows.

(A) The needs assessment shall include a root cause analysis.

(B) Root causes identified through the needs assessment will be addressed in the targeted improvement plan and, if applicable, campus turnaround plan;

(3) assist in the creation of a targeted improvement plan, as follows.

(A) Input must be gathered from the principal; campus-level committee established under TEC, §11.251; parents; and community members, prior to the development of the targeted improvement plan, using the following steps.

(i) The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

(ii) The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

(iii) All input provided by family and community members should be considered in the development of the final targeted improvement plan submitted to the TEA.

(B) The completed targeted improvement plan must be presented at a public hearing and approved by the board of trustees.

(C) The targeted improvement plan must be submitted to the commissioner of education for approval according to TEA procedures and guidance; and

(4) assist the commissioner in monitoring the implementation of the targeted improvement plan. The campus will submit updates to the TEA as requested that include:

(A) a description of how elements of the targeted improvement plan are being implemented and monitored; and

(B) data demonstrating the results of interventions from the targeted improvement plan.

(f) [~~(e)~~] If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a second consecutive year, the campus must engage in the processes outlined in subsections (a), (c) [~~(b)~~] , (d) [~~(c)~~] , and (e) [~~(d)~~] of this section, and the campus must develop a campus turnaround plan to be approved by the commissioner as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(g) [~~(f)~~] If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a third or fourth consecutive year, the campus must engage in the processes outlined in subsections (a), (c) [~~(b)~~] , (d) [~~(c)~~] , and (e) [~~(d)~~] of this section, and the campus must implement the commissioner-approved campus turnaround plan as described in §97.1064 of this title.

(h) [~~(g)~~] If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or closure of the campus.

(i) [~~(h)~~] Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under TEC, §39.054(e).

(j) [~~(i)~~] Interventions and sanctions listed under this section begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

§97.1064. Campus Turnaround Plan.

(a) If a campus is assigned an unacceptable rating under Texas Education Code (TEC), §39.054(e), for two consecutive years, the campus must develop a campus turnaround plan to be approved by the commissioner of education in accordance with TEC, §§39A.103-39A.107.

(b) A charter campus subject to this section must revise its charter in accordance with §100.1033 of this title (relating to Charter Amendment). The governing board of the charter performs the function of the board of trustees for this section.

(c) The district may request assistance from a regional education service center or partner with an institution of higher education in developing and implementing a campus turnaround plan.

(d) Within 60 days of receiving a campus's preliminary accountability rating the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan. All input provided by family, community members, and stakeholders must be considered in the development of the final campus turnaround plan submitted to the Texas Education Agency (TEA).

(e) The district shall notify stakeholders of their ability to review the completed plan and post the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees as described in TEC, §39A.104. The district shall provide the following groups an opportunity to review and comment on the completed plan before it is submitted for approval to the board of trustees:

(1) the campus-level committee established under TEC, §11.251. If the campus is not required to have a campus-level com-

mittee under TEC, §11.251, the district shall provide an opportunity for professional staff at the campus to review and comment on the campus turnaround plan;

(2) teachers at the campus;

(3) parents; and

(4) community members.

(f) A campus turnaround plan must include:

(1) a detailed description of the method for restructuring, reforming, or reconstituting the campus;

(2) a detailed description of the academic programs to be offered at the campus, including instructional methods, length of school day and school year, academic credit and promotion criteria, and programs to serve special student populations;

(3) a detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources;

(4) written comments received from stakeholders described in subsection (e) of this section;

(5) the term of the charter, if a district charter is to be granted for the campus under TEC, §12.0522; and

(6) a detailed description for developing and supporting the oversight of academic achievement and student performance at the campus, approved by the board of trustees under TEC, §11.1515.

(g) Upon approval of the board of trustees, the district must submit the campus turnaround plan electronically to the TEA by March 1 unless otherwise specified.

(h) Not later than June 15 of each year, the commissioner must either approve or reject any campus turnaround plan prepared and submitted by a district.

(1) The commissioner's approval or rejection of the campus turnaround plan must be in writing.

(2) If the commissioner rejects a campus turnaround plan, the commissioner must also send the district an outline of the specific concerns regarding the turnaround plan that resulted in the rejection.

(3) In accordance with TEC, §39A.107(a), the commissioner may approve a campus turnaround plan if the commissioner determines that the campus will satisfy all student performance standards required under TEC, §39.054(e), not later than the second year the campus receives a performance rating following the implementation of the campus turnaround plan. In order to make that determination, the commissioner will consider the following:

(A) an analysis of the campus and district's longitudinal performance data, which may be used to measure the expected outcomes for the campus;

(B) the district's success rate in turning around low-performing campuses, if applicable; and

(C) evaluation of the efficacy of the plan, with consideration given to whether the turnaround plan is sufficient to address the specific and expected needs of the campus.

(i) A district must submit a modified campus turnaround plan if the commissioner rejected the district's initial submission.

(1) The modified plan must be created with assistance from TEA staff, as requested by the district.

(2) The modified plan must be made available for stakeholder comment prior to board approval and be approved by the board prior to submission to the TEA.

(3) The district must submit the plan no later than the 60th day from the date the commissioner rejected the initial campus turnaround plan.

(4) The commissioner's decision regarding the modified plan must be given in writing no later than the 15th day after the commissioner receives the plan.

(j) A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

(k) A campus that has received an unacceptable rating for the school year following the development of the campus turnaround plan must implement its commissioner-approved campus turnaround plan with fidelity until the campus operates for two consecutive school years without an unacceptable rating.

(l) A campus may modify its campus turnaround plan with commissioner approval if it is determined that due to a change in circumstances occurring after the plan's approval under TEC, §39A.107, a modification of the plan is necessary to achieve the plan's objectives.

(1) A change in circumstance may be the following:

(A) a campus that has written a turnaround plan but has not yet been ordered to implement it and has received a Not Rated; Declared State of Disaster rating for two consecutive years prior to receiving its next F rating; or

(B) a campus that has implemented its turnaround plan for no more than one year prior to receiving a Not Rated; Declared State of Disaster rating for two consecutive years.

(2) A campus that has modified its turnaround plan under this subsection may only request additional modifications to the plan based on circumstances that have changed since the last commissioner-approved modification.

(3) Any modification of a turnaround plan must be effective no sooner than the beginning of the next school year.

(m) [~~(l)~~] The commissioner may appoint a monitor, conservator, management team, or board of managers for a school district that has a campus that has been ordered to implement an updated targeted improvement plan. The commissioner may order any of the interventions as necessary to ensure district-level support for the low-performing campus and the implementation of the updated targeted improvement plan. The commissioner may make the appointment at any time during which the campus is required to implement the updated targeted improvement 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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Cristina De La Fuente-Valadez
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CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §105.1021

The Texas Education Agency (TEA) proposes an amendment to §105.1021, concerning severance payment reporting and reductions in Foundation School Program (FSP) funding. The proposed amendment would modify the rule to include open-enrollment charter schools, as authorized by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 105.1021 defines the requirements for determining whether a payment to a departing superintendent is a severance payment and whether the commissioner will reduce a school district's FSP funding by the amount that a severance payment to a superintendent exceeds the amount that is equal to one year's salary and benefits under the superintendent's terminated contract. The rule currently applies only to school districts.

HB 189, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), §12.104(b-4), which applies the severance payment provisions of TEC, §11.201(c), to open-enrollment charter schools.

The proposed amendment would implement HB 189 by applying the rule's provisions to open-enrollment charter schools.

FISCAL IMPACT: Leo Lopez, associate commissioner of school finance, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation and increase the number of individuals subject to the rule's applicability by applying the rule to severance payments made to departing superintendents of open-enrollment charter schools.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not decrease the number of individuals subject to the rule's applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be that the rule is based on current law and provides open-enrollment charter schools with clarification on severance payment reporting and reductions in FSP funding. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 4, 2022, and ends April 4, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on March 4, 2022. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §11.201(c), which requires the commissioner to reduce a district's Foundation School Program funds by the amount of a payment made by the district to a superintendent on early termination from the superintendent's contract that exceeds an amount equal to one year's salary and benefits under the superintendent's terminated contract; and TEC, §12.104(b-4), as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which makes the severance payment provisions of TEC, §11.201(c), applicable to open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.201(c) and §12.104(b-4).

§105.1021. Severance Payment Reporting and Reductions in Foundation School Program Funding.

(a) Definitions. In this section, the following terms have the following meanings.

(1) Severance payment--Any amount paid by the board of trustees of an independent school district or open-enrollment charter school to or in behalf of a superintendent on early termination of the superintendent's contract that exceeds the amount earned by the superintendent under the contract as of the date of termination, including any amount that exceeds the amount of earned standard salary and benefits that is paid as a condition of early termination of the contract. Payments to a former superintendent who remains employed by a school district or an open-enrollment charter school in another capacity or contracts with a school district or an open-enrollment charter school to provide the district or charter school services may be severance payments in

whole or in part if the payments are compensation for the early termination of a prior employment agreement. Severance payments include any payment for actual or threatened litigation involving or related to the employment contract.

(2) Superintendent--The educational leader and chief executive officer of an independent school district or open-enrollment charter school. "Departing superintendent" means an individual no longer acting as superintendent and includes a former superintendent who is employed or contracted to work in any other capacity by the same school district or open-enrollment charter school that previously employed him or her as superintendent.

(3) Foundation School Program (FSP) funding reduction amount--The portion of the amount of a severance payment to a superintendent that is deducted from an independent school district's or open-enrollment charter school's FSP funding. The FSP funding reduction amount is calculated according to the provisions in subsection (c) of this section.

(b) Severance payment reporting and identification of districts or open-enrollment charter schools subject to funding reductions.

(1) An independent school district or open-enrollment charter school that makes a payment of any kind to a departing superintendent must file with the Texas Education Agency (TEA) a Superintendent Payment Disclosure Form, which is available on the TEA website. However, no form is required to be filed for a payment already earned and payable under the terms of a terminated employment contract, such as a payment for accrued vacation.

(2) The form must be filed by the 60th day after the district or open-enrollment charter school executes the agreement to make the payment or the 60th day after any payment under such an agreement, whichever is sooner. The interim superintendent, new superintendent, or school board president is responsible for timely filing of the Superintendent Payment Disclosure Form. Filing of the disclosure form is required regardless of whether a school district or an open-enrollment charter school considers a payment to be a severance payment as that term is defined in subsection (a) of this section. As stated in the disclosure form, a school district or an open-enrollment charter school must enclose with the submitted form a copy of the superintendent employment contract and a copy of the termination or severance agreement.

(3) The commissioner of education determines whether a payment to a departing superintendent is a severance payment for purposes of this section, and whether an independent school district or open-enrollment charter school is subject to reductions in FSP funding under this section, based on information the district or charter school reports on the Superintendent Payment Disclosure Form and any additional documentation the commissioner requires to make these determinations. The commissioner may also make these determinations based on agency documents that are made available to the district or charter school. The commissioner's determinations under this paragraph are the final agency administrative decisions and may not be appealed under [~~the~~] Texas Education Code (TEC), §7.057(a).

(4) A school district or an open-enrollment charter school must provide the commissioner with any information or documentation that the commissioner requests to make the determinations described in paragraph (3) of this subsection. Information and documentation that the commissioner may request includes but is not limited to the following:

(A) the canceled check for any payment made to the departing superintendent beyond the amount earned under the contract at the time employment was terminated;

(B) the Internal Revenue Service Form W-2, Wage and Tax Statement, reporting any payment of supplemental wages (compensation paid in addition to the employee's regular wages) and any special wage payment (amount paid to an employee or former employee for services performed in a prior year) made to the departing superintendent;

(C) worksheets documenting calculation of earned payroll amounts through the departing superintendent's last day of employment;

(D) general ledger detail documenting transactions involving payments to the departing superintendent;

(E) minutes of the meeting of the board of trustees documenting approval of a final agreement to make a payment or payments to the departing superintendent;

(F) the departing superintendent's employment contract for the period (year) of employment immediately preceding the most recent period (year), if applicable;

(G) the compensation plan or salary schedule for the departing superintendent for the most recent contractual period (year) of employment and for the period (year) immediately preceding, if applicable;

(H) salary distribution records for the departing superintendent's most recent contractual period (year) of employment and for the period (year) immediately preceding, if applicable;

(I) any agreement for employment of the departing superintendent after that individual's employment as superintendent; and

(J) the board policy covering employee benefits, including monthly allowances, deferred compensation, and payments for leave (sick, personal, vacation, compensatory, or any other type of leave) that is earned but unused upon termination, that was in effect at the time the departing superintendent's employment was terminated.

(c) Reduction in FSP funding.

(1) The commissioner will reduce a school district's or an open-enrollment charter school's FSP funding by the amount that a severance payment to a superintendent exceeds the amount that is equal to one year's salary and benefits under the superintendent's terminated contract. The commissioner will reduce the district's or charter school's FSP funding for the school year following the school year in which the first payment requiring an FSP funding reduction under this section is made to the former superintendent. The commissioner also will reduce the district's or charter school's FSP funding in the school year following each school year that any additional payment requiring an FSP reduction under this section is made to the former superintendent. If a school district's or an open-enrollment charter school's liability to the state under this section exceeds the total of the district's or charter school's estimated payments of FSP funding for the remainder of the school year, the district or charter school is subject to reductions in its FSP funding for subsequent school years until the liability has been fully liquidated. The reduction in FSP funding may be applied to any source of FSP estimated earned revenue. A proportionate amount of the reduction in FSP funding will be deducted from each FSP state aid payment for the school year or years.

(2) A reduction in FSP funding under this section does not affect a school district's or open-enrollment charter school's obligation to comply with all provisions of the TEC, Chapter 48, including its obligation under that chapter to provide educational services to special populations.

(d) Review and consequences of failure to comply with this section. The information a district or open-enrollment charter school reports on its Superintendent Payment Disclosure Form is subject to review by the TEA division responsible for school financial reviews. Compliance with the reporting requirements of this section is considered part of the district's or open-enrollment charter school's compliance with required financial accounting practices under the TEC, §39.057(a)(4). Failure to comply with this section's reporting requirements may result in sanctions as authorized by the TEC, §39.057(d) and (e).

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.17

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 TAC §703.17, relating to revenue sharing terms and the Institute's option to take equity ownership in a grant recipient.

Background and Justification

Texas Health and Safety Code §102.256 requires CPRIT to include terms in every grant contract that allow the state to benefit financially from the results of CPRIT-funded grant projects. One option authorized by the statute is through the state taking equity in the grantee. Issues related to equity ownership may affect certain standard grantee reporting requirements, such as the schedule for the grantee to certify and verify its matching funds obligation. The proposed change requires CPRIT to specify in the award contract any changes from standard reporting requirements and associated consequences for failing to timely report.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for CPRIT, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 TAC §11.1, has determined that during the first five years that the proposed rule change will be in effect:

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

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

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

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

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

(6) the proposed rule change will not expand existing rule;

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

(8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule change to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than April 4, 2022. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to kdoyle@cprit.texas.gov or by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§703.17. Revenue Sharing Standards.

(a) The Institute shall share in the financial benefit received by the Grant Recipient resulting from the patents, royalties, assignments, sales, conveyances, licenses and/or other benefits associated with the Project Results, including interest or proceeds resulting from securities and equity ownership. Such payment may include royalties, income, milestone payments, or other financial interest in an existing company or other entity.

(b) The Institute's election as to form of payment and the calculation of such payment shall be specified in the Grant Contract.

(c) Unless otherwise provided by the Grant Contract between the Institute and the Grant Recipient, payments to the Institute required

by this section shall be made no less than annually pursuant to a schedule set forth in the Grant Contract and shall be accompanied by an appropriate financial statement supporting the calculation of the payment.

(d) Nothing herein shall affect or otherwise impair the application of federal laws for projects receiving some portion of funding from the U.S. Government.

(e) Unless the Grant Contract specifically states otherwise, the obligation to share revenues with the Institute is continuous so long as the product resulting from the Institute supported project enjoys government exclusivity.

(f) If the Institute elects to take equity ownership in a Grant Recipient, the Grant Contract shall specify:

(1) Any additional requirements associated with the equity ownership, including a specified schedule for the Grant Recipient to certify and verify the Grant Recipient's Matching Funds obligation.

(2) The Grant Contract shall also specify the Institute's recourse in the event that the Grant Recipient fails to fulfill reporting requirement deadlines.

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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Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER UU. MACHINE-READABLE FILES

28 TAC §§21.5501 - 21.5503

The Texas Department of Insurance proposes new 28 TAC §§21.5501 - 21.5503, concerning machine-readable files. These sections implement House Bill 2090, 87th Legislature, 2021, which amended the Texas Insurance Code by adding Chapter 1662, concerning Health Care Cost Transparency.

EXPLANATION. New Insurance Code Chapter 1662 requires health benefit plan issuers or administrators to publish to the internet certain information in three machine-readable files. Specifically, Insurance Code §1662.103 requires issuers or administrators to publish: rate information for covered health care services and supplies; unique billed charges and allowed amounts for covered services provided by out-of-network providers; and negotiated rates for prescription drugs. Insurance Code §1662.107 requires the department to prescribe by rule the form and manner in which the machine-readable files must be made available.

The proposed new sections are described in the following paragraphs.

Section 21.5501. New §21.5501 identifies the types of health benefit plans that are, and are not, subject to the requirements to produce machine-readable files. The section also specifies when issuers must begin publishing machine-readable files, including providing additional time for smaller issuers. Additionally, the new section provides that issuers are not required to publish machine-readable files under this proposal's requirements until the federal Departments of Labor, Health and Human Services, and Treasury begin enforcing the corresponding federal Transparency in Coverage rules (26 C.F.R. §§54.9815-2715A1 through A3; 29 C.F.R. §§2590.715-2715A1 through A3; and 45 C.F.R. §§147.210-.212), or January 1, 2024, whichever is earlier. As of the date of this publication, federal guidance states that the federal Departments will defer enforcement of the requirement that plans and issuers publish machine-readable files relating to prescription drug pricing pending further federal rulemaking, while enforcement of the requirements related to in-network rates and out-of-network allowed amounts and billed charges will be deferred until July 1, 2022. *See* FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49 (available at dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf).

Section 21.5502. New §21.5502 addresses various details concerning the form and manner in which machine-readable files are to be published, including transport mechanisms, nonproprietary data, and file-naming conventions. The new section also provides a safe harbor for issuers that are compliant with federal machine-readable file requirements.

Section 21.5503. New §21.5503 describes the data schemas that specify the data fields that must be included in each machine-readable file and the technical parameters associated with each data field. The department has published the data schemas on its website.

The department received comments at a stakeholder meeting on October 27, 2021, as well as via a request for information posted on the department's website on September 28, 2021. The department considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed new sections 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 statute. Ms. Bowden made this determination because the proposed sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections. Any costs to state or local governments with applicable health benefit plans would result from the enforcement or administration of the statute, not from the proposed sections.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new sections are in effect, Ms. Bow-

den expects that administering and enforcing the proposed sections will have the public benefit of ensuring that the department's rules properly implement new Insurance Code Chapter 1662, which improves transparency and consumer access to health care cost information.

Ms. Bowden expects that the proposed new sections will not increase the cost of compliance with Insurance Code Chapter 1662 because the sections do not impose requirements beyond those in the statute. Any costs associated with the department's efforts to ensure that health benefit plan issuers or administrators comply with the publication of the required information are attributable to statute, not from the proposed new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed new sections will not have an adverse economic effect on rural communities or on small or micro businesses. Any associated costs are attributable to Insurance Code Chapter 1662 and not to the proposed sections.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a possible cost on regulated persons. However, even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed new sections are necessary to implement legislation. The proposed rulemaking implements Insurance Code Chapter 1662, as added by HB 2090.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed new sections are in effect, the proposed sections:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on April 4, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on April 4, 2022. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §§21.5501 - 21.5503 under Insurance Code §§1662.004, 1662.107, and §36.001.

Insurance Code §1662.004 provides that the Commissioner may adopt rules necessary to implement Chapter 1662.

Insurance Code §1662.107 provides that the files described by §1662.103 must be available in a form and manner prescribed by department rule.

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

CROSS-REFERENCE TO STATUTE. Section 21.5501 implements Insurance Code §1662.101. Section 21.5502 implements Insurance Code §§1662.103 - 1662.107. Section 21.5503 implements Insurance Code §1662.107.

§21.5501. Applicability and Effective Date.

(a) Except as provided in subsections (b) and (c) of this section, this subchapter applies to issuers of health benefit plans as specified in Insurance Code §1662.003, concerning Applicability of Chapter, that provide major medical coverage for which federal reporting requirements under 26 C.F.R. Part 54, concerning Pension Excise Taxes; 29 C.F.R. Part 2590, concerning Rules and Regulations for Group Health Plans; 45 C.F.R. Part 147, concerning Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets; and 45 C.F.R. Part 158, concerning Issuer Use of Premium Revenue: Reporting and Rebate Requirements, do not apply, including:

(1) issuers providing short-term limited-duration insurance, as defined in Insurance Code Chapter 1509, concerning Short-Term Limited-Duration Insurance;

(2) issuers providing grandfathered health plan coverage, as defined in 45 C.F.R. §147.140, concerning Preservation of Right to Maintain Existing Coverage; and

(3) a regional or local health care program operated under Health and Safety Code §75.104, concerning Health Care Services.

(b) This subchapter does not apply to the following types of plans:

(1) a plan that is not considered creditable coverage as specified under Insurance Code §1205.004(b), concerning Creditable Coverage;

(2) the child health plan program operated under Health and Safety Code Chapter 62, concerning Child Health Plan for Certain Low-Income Children;

(3) the health benefits plan for children operated under Health and Safety Code Chapter 63, concerning Health Benefits Plan for Certain Children; and

(4) the state Medicaid program operated under Human Resources Code Chapter 32, concerning Medical Assistance Program, including the Medicaid managed care program operated under Government Code Chapter 533, concerning Medicaid Managed Care Program.

(c) Except as provided by subsections (d) and (e) of this section, with respect to an applicable health benefit plan, an issuer must begin publishing machine-readable files as required under this subchapter in the month in which the plan year or policy year begins.

(d) A health benefit plan issuer with fewer than 1,000 total enrollees in all health benefit plans subject to reporting as of December 31, 2021, must begin publishing machine-readable files as required under this subchapter no later than January 1, 2024.

(e) Except as provided by subsection (d) of this section, an issuer is required to begin publishing machine-readable files no sooner than 180 days after the effective date of this section and no later than the earliest date specified in paragraphs (1) and (2) of this subsection:

(1) the date that the federal Departments of Labor, Health and Human Services, and Treasury begin enforcing the federal Transparency in Coverage rules specific to the publication of machine-readable files for prescription drug pricing, in-network rates, and out-of-network allowed amounts and billed charges, if the date of enforcement occurs after the 180th day following the effective date of this section; or

(2) January 1, 2024.

§21.5502. Form and Method of Publishing Machine-Readable Files.

(a) Required machine-readable files. Issuers must publish the following machine-readable files consistent with Insurance Code Chapter 1662, Subchapter C, concerning Required Public Disclosures, and the rules under this subchapter:

(1) an in-network negotiated rates file, containing in-network provider negotiated rates for all items and services, consistent with Insurance Code §1662.103(a)(1), concerning Required Information, and §1662.104, concerning Network Rate Disclosures;

(2) an out-of-network allowed amounts file, containing billed and allowed amounts for out-of-network providers, consistent with Insurance Code §1662.103(a)(2) and §1662.105, concerning Out-of-Network Allowed Amounts; and

(3) an in-network prescription drugs file, containing in-network historical net prices and negotiated rates for prescription drugs, consistent with Insurance Code §1662.103(a)(3) and §1662.106, concerning Historical Net Price.

(b) Transport mechanism. An issuer must make all machine-readable files available via HTTPS.

(c) Content type. An issuer must use a nonproprietary and open format for publishing machine-readable files. Examples of acceptable formats include JSON, XML, and YAML. Examples of proprietary formats that are not acceptable include PDF, XLS, and XLSX.

(d) Public discoverability. An issuer must make machine-readable files available to the public without restrictions that would impede the re-use of that information. The issuer must provide the location of the URLs for the machine-readable files over HTTPS to ensure the integrity of the data.

(e) Indexing. To allow for search engine discoverability, an issuer may not use a mechanism, such as a robots.txt file or a meta tag on the page where the files are hosted, or other mechanism that gives instructions to web crawlers to not index the page.

(f) Special data types. Dates must be strings in ISO 8601 format (e.g., YYYY-MM-DD).

(g) Different flat files. Issuers must publish three machine-readable files using the following file type names:

(1) "in-network-rates" for the file containing in-network provider negotiated rates, consistent with Insurance Code §1662.103(a)(1) and §1662.104;

(2) "allowed-amounts" for the file containing billed and allowed amounts for out-of-network providers, consistent with Insurance Code §1662.103(a)(2) and §1662.105; and

(3) "prescription-drugs" for the file containing historical net prices and negotiated rates for prescription drugs, consistent with Insurance Code §1662.103(a)(3) and §1662.106.

(h) File-naming convention. An issuer must name each file using the naming convention and standards required under this subsection.

(1) The file naming convention includes the elements identified in subparagraphs (A) - (D) of this paragraph, each separated by an underscore, followed by a period and the file extension:

(A) the four-digit year, two-digit month, and two-digit day, each separated by dashes (e.g., "2022-12-01" would be used for a file published December 1, 2022);

(B) the issuer name, with any spaces replaced with dashes (e.g., "issuer-abc" would be used for an issuer called "issuer abc");

(C) the plan name, with any spaces replaced with dashes (e.g., "healthplan-100" would be used for a plan called "healthplan 100"); and

(D) the file type name (e.g., "in-network-rates").

(2) An issuer may include only alphanumeric characters in the file name. An issuer may not include special characters or punctuation other than the dashes, underscores, and periods specified in the naming convention. An issuer must either remove special characters completely or replace the special characters with a dash ("-").

(3) Examples of the file naming convention are provided in figure: 28 TAC §21.5502(h)(3).
Figure: 28 TAC §21.5502(h)(3)

(i) Safe harbor. An issuer that publishes machine-readable files in the form and method specified by the federal guidance published on the following website: github.com/CMSgov/price-transparency-guide, and its associated schemas, will be deemed compliant for the purposes of this subchapter.

§21.5503. Data Schemas.

(a) In-network negotiated rate file schemas. For the "in-network-rates" file published under this subchapter, an issuer must include data elements consistent with the In-Network File Schema contained in Machine-Readable Files: Data Schemas (version 1.0), published on the department's website.

(b) Out-of-network allowed amount file schemas. For the "allowed-amounts" file published under this subchapter, an issuer must include data elements consistent with the Out-of-Network Allowed Amount File Schema contained in Machine-Readable Files: Data Schemas (version 1.0), published on the department's website.

(c) In-network prescription drugs file schemas. For the "prescription-drugs" file published under this subchapter, an issuer must include data elements consistent with the Rx File Schema contained in Machine-Readable Files: Data Schemas (version 1.0), published on the department's 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.

Filed with the Office of the Secretary of State on February 17, 2022.

TRD-202200576
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 676-6584

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.282

The Comptroller of Public Accounts proposes amendments to §3.282, concerning auditing taxpayer records. The comptroller amends the section to reflect the changes in Tax Code, §151.054 (Gross Receipts Presumed Subject to Tax) and §151.104 (Sale for Storage, Use, or Consumption Presumed) made by Senate Bill 296, 87th Legislature, 2021, effective June 7, 2021.

The comptroller amends subsection (k) to change the time period during which a seller must provide resale or exemption certificates to the comptroller. Currently, sellers must provide certificates within 60 days after receipt of notice from the comptroller. The subsection is amended to state a seller must provide certificates within 90 days or before a later date agreed to in writing by the comptroller. Non-substantive, conforming charges are made throughout the subsection.

The comptroller amends paragraph (2) by adding clarifying language regarding the timeframe in which written notices are issued. No substantive change is intended.

Language from existing paragraph (2) is segregated into paragraphs (2) - (5) for readability. The comptroller adds a cross-reference to §3.286 (relating to Seller's and Purchaser's Responsibilities) to existing language in new paragraph (5) to be consistent with §3.285 (relating to Resale Certificate; Sales for Resale) and §3.286 of this title. The comptroller renumbers paragraph (3) to new paragraph (6).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Reynolds also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic costs to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §151.054 (Gross Receipts Presumed Subject to Tax) §151.104 (Sale for Storage, Use, or Consumption Presumed), and §151.0231 (Managed Audits).

§3.282. Auditing Taxpayer Records.

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

(1) Managed audit--A taxpayer self-review and analysis of invoices, checks, accounting records, or other documents or information to determine a taxpayer's liability for tax under Tax Code, Chapter 151, as allowed under a written agreement with the comptroller authorizing a managed audit as described in subsection (f) of this section.

(2) Percentage-based reporting method--A method by which a direct payment permit holder may be authorized to categorize purchase transactions according to standards specified in a letter of authorization issued under the provisions set out in subsection (g) of this section, reviews an agreed-on sample of invoices in those categories to determine the percentage of taxable transactions, and uses that percentage to calculate the amount of tax to be reported.

(b) The comptroller or an authorized representative of the comptroller may audit a taxpayer's accounts and records at any time during regular business hours at the discretion of the comptroller or the comptroller's authorized agent or representative.

(c) The comptroller may use a detailed auditing procedure or a sample and projection auditing method to determine tax liability. Sampling procedure may include manual sampling techniques and computer-assisted audit techniques, whichever produce the most accurate results in the most efficient manner.

(d) A sample and projection auditing method is appropriate if:

(1) the taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical;

(2) the taxpayer's records are inadequate or insufficient, so that a competent audit for the period in question is not otherwise possible; or

(3) the cost of an audit of all detailed records to the taxpayer or to the state will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

(e) Before using a sample technique to establish a tax liability, the comptroller must notify the taxpayer in writing of the sampling procedure to be used.

(f) The comptroller may authorize taxpayers that meet certain requirements to perform managed audits.

(1) A taxpayer who wishes to participate in a managed audit must request authorization from the comptroller's office to conduct a managed audit under this section. Authorization will only be granted as part of a written agreement between the taxpayer and the comptroller's office. The agreement must:

(A) be signed by an authorized representative of the comptroller and the taxpayer; and

(B) specify the period to be audited and the procedure to be followed.

(2) In determining whether to authorize a managed audit, the comptroller may consider, in addition to other factors the comptroller considers relevant:

(A) the taxpayer's history of tax compliance, including:

(i) timely filing of all reports;

(ii) timely payment of all taxes and fees due the state;

(iii) prior audit history;

(iv) delinquency in other taxes;

(v) correction of problems identified;

(vi) collection of tax that was not remitted; and

(vii) whether a penalty waiver had been denied on prior occasions and the reason for denial;

(B) the amount of time and resources the taxpayer has available to dedicate to the audit;

(C) the extent, availability, and completeness of the taxpayer's records for the period to be covered by the managed audit;

(D) the taxpayer's ability to pay any expected liability; and

(E) the size and sophistication of the taxpayer.

(3) The decision to authorize or not authorize a managed audit rests solely with the comptroller.

(4) A managed audit may be limited to certain categories of liability under Tax Code, Chapter 151, including tax on:

(A) sales of one or more types of taxable items;

(B) purchases of assets;

(C) purchases of expense items;

(D) purchases under a direct payment permit; or

(E) any other category specified in an agreement authorized by this section.

(5) Before the audit is finalized, the comptroller may examine records that the comptroller determines are necessary to verify the results.

(6) Unless the audit or information reviewed by the comptroller under this subsection discloses fraud or willful evasion of the tax, the comptroller may not assess a penalty and may waive all or part of the interest that would otherwise accrue on any amount identified to be due in a managed audit. This subsection does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax but was not remitted to this state.

(7) Except as provided by applicable law, the taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit. See §3.325 of this title (relating to Refunds and Payments Under Protest).

(g) The comptroller may authorize direct payment permit holders that meet certain requirements to report tax on purchases using a percentage-based reporting method.

(1) A holder of a direct payment permit may request authorization from the comptroller to use a percentage-based reporting method. The authorized percentage must be used for a three-year period specified by the comptroller, unless the authorization is revoked by the comptroller.

(2) The authorization to report under this subsection may be revoked if the comptroller determines that the percentage being used is no longer representative because of a change in the taxpayer's business operations or in law, including a change in the interpretation of a law or rule. For example, two decisions from the Court of Appeals changed the list of items that may be purchased tax free by manufacturers. Subsequently the legislature passed two bills that significantly changed the tax responsibilities of manufacturers. Each of these changes affected a manufacturer's percentage used to report taxable purchases.

(3) The decision of the comptroller to deny or revoke authorization under this section is not subject to appeal.

(4) When authorizing reporting under this section, the comptroller may categorize transactions by dollar amount, by type of taxable item purchased, by the purpose for which the taxable item will be used, or by other standards appropriate to the taxpayer's operations.

(h) A taxpayer who holds a permit issued under Tax Code, Chapter 151, who has paid Texas tax in error on purchases of taxable items, whether sales tax was remitted directly to this state or to a retailer holding a permit under Tax Code, Chapter 151, may compute the amount of overpayment by use of a projection based on a sampling of transactions.

(1) The sampling method must be one that has been approved by the comptroller.

(2) The taxpayer must record the method by which the projection and computation were performed and must make available, on request by the comptroller, information explaining the method employed and the records on which the projection and computation were based.

(i) A taxpayer who holds a permit issued under Tax Code, Chapter 151, may obtain reimbursement for amounts determined to have been overpaid by taking a credit on one or more sales tax returns or by filing a claim for refund with the comptroller within the limitation period specified by Tax Code, Chapter 111. See §3.325 of this title. A taxpayer is required to keep contemporaneous records to substantiate and enable verification of the taxpayer's credit or refund claim for a minimum of four years from the date on which the record is made, and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller, or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period.

(1) A taxpayer may take a credit by amending the sales tax return for the period in which the tax was originally paid.

(2) If a taxpayer chooses to take the credit by claiming a refund, the claim must identify the period in which the tax was originally paid.

(3) A taxpayer who claims a credit or submits a refund request for local taxes must identify the period in which the local tax was paid and the local taxing jurisdiction to which the local tax was reported.

(4) Interest will be paid on tax amounts found to be erroneously paid for reports due on or after January 1, 2000, whether claimed on a request for refund or claimed in an audit. See also §3.325 of this title and Tax Code, §111.064.

(j) If records are inadequate to accurately reflect the business operations of the taxpayer, the auditor will determine the best information available and base the audit report on that information. See §3.281 of this title (relating to Records Required; Information Required) for information on proper records.

(k) Resale and exemption certificates.

(1) Resale and exemption certificates should be available at the time of the audit. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained.

(2) The seller has 90 [~~60~~] days, or until a later date agreed to in writing by the comptroller and the seller, referred to in this section as "the period," from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller no earlier than [~~upon~~] the filing of a petition for redetermination or claim for refund.

(3) For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date.

(4) If the seller is not in possession of the certificates by the end of the period [~~within 60 days from the date written notice is given by the comptroller that certificates pertaining to periods or transactions specified in the notice are required~~], any deductions claimed which require resale or exemption certificates will be disallowed. Exemptions claimed by those certificates acquired during the [~~this 60-day~~] period will be subject to independent verification by the comptroller before the deductions will be allowed.

(5) Certificates delivered after the [~~60-day~~] period will not be accepted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale); §3.286 of this title (relating to Seller's and Purchaser's Responsibilities); §3.287 of this title (relating to Exemption Certificates); and §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(6) [~~(3)~~] When written notice [~~a 60-day letter~~] has been received, a resale or exemption certificate is the only acceptable proof that a taxable item was purchased for resale or qualifies for exemption.

(l) Both sellers and purchasers are subject to audit and assessment of tax on any transactions on which tax was due but has not been paid.

(m) The comptroller may proceed against either the seller or purchaser, or against both, until the tax, penalty, and interest have been paid.

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 February 15, 2022.

TRD-202200546
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 475-0387

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34 TAC §3.285

The Comptroller of Public Accounts proposes amendments to §3.285, concerning resale certificates; sales for resale. The comptroller amends the section to reflect the changes in Tax Code, §151.054 (Gross Receipts Presumed Subject to Tax) and §151.104 (Sale for Storage, Use, or Consumption Presumed) made by Senate Bill 296, 87th Legislature, 2021, effective June 7, 2021.

The comptroller amends subsection (c)(3)(C) to state the seller has 90 days, or a later date agreed to in writing by the comptroller and the seller, from the date written notice is received by the seller from the comptroller in which to deliver the resale certificates to the comptroller, as opposed to the current 60-day period. The comptroller moves existing language to new subparagraphs (C)(i)-(C)(iii) for readability. Non-substantive, conforming charges are made throughout the subsection.

The comptroller amends new subsection (c)(3)(C)(i) by adding clarifying language regarding the timeframe in which written notices are issued. No substantive change is intended.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Reynolds also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic costs to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §151.054 (Gross Receipts Presumed Subject to Tax), §151.104 (Sale for Storage, Use, or Consumption Presumed), and §151.0231 (Managed Audits).

§3.285. Resale Certificate; Sales for Resale.

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

(1) Equipment--Any apparatus, device, or simple machine used to perform a service.

(2) Federal government--The government of the United States of America and its unincorporated agencies and instrumentalities, including all parts of the executive, legislative, and judicial branches and all independent boards, commissions, and agencies of the United States government unless otherwise designated in this section.

(3) Integral part--An essential element without which the whole would not be complete. One taxable item is an integral part of a second item if the taxable item is necessary, as opposed to desirable, for the completion of the second item, and if the second item could not be provided as a whole without the taxable item.

(4) Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(5) Machinery--All power-operated machines.

(6) Mexico--Within the geographical limits of the United Mexican States.

(7) Purchaser--A person who is in the business of selling, leasing, or renting taxable items.

(8) Seller--Every retailer, wholesaler, distributor, manufacturer, marketplace provider, or any other person who sells, leases, rents, or transfers ownership of tangible personal property or performs taxable services for consideration. Specific types of sellers, such as direct sales organizations, pawnbrokers, marketplace providers, and auctioneers, are further defined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(9) Taxable item--Tangible personal property and taxable services. Except as otherwise provided by Tax Code, Chapter 151, the sale or use of a taxable item in an electronic form instead of on physical media does not alter the item's tax status.

(10) Tax-free inventory--A stock of tangible personal property purchased tax-free for resale, whether from out-of-state or by issuing a properly completed resale certificate, by a purchaser who, at the time of purchase:

(A) holds a valid Texas sales and use tax permit;

(B) makes sales of taxable items in the regular course of business; and

(C) does not know whether the tangible personal property will be resold in the normal course of business or used in the performance of a service.

(11) United States--Within the geographical limits of the United States of America or within the territories and possessions of the United States of America.

(b) Sale for resale.

(1) Except as provided in paragraphs (3) - (6) of this subsection, each of the following is a sale for resale:

(A) the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling it as a taxable item in the United States or Mexico in the normal course of business:

(i) in the form or condition in which it is acquired; or

(ii) as an attachment to or as an integral part of another taxable item;

(B) the sale of tangible personal property to a purchaser who acquires the property for the sole purpose of leasing or renting it in the United States or Mexico in the normal course of business to another person, but not if incidental to the leasing or renting of real estate, as described in §3.294(k) of this title (relating to Rental and Lease of Tangible Personal Property);

(C) the sale of tangible personal property to a purchaser who acquires the property for the purpose of transferring the property to a customer in the United States or Mexico as an integral part of a taxable service;

(D) the sale of a taxable service performed on tangible personal property that the purchaser of the service holds for sale, lease, or rental;

(E) the sale of tangible personal property or a taxable service to a purchaser who acquires the tangible personal property or service for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, for the sale, other than the lease or rental, of tangible personal property with an entity or organization exempted from the taxes imposed by this chapter under Tax Code, §151.309 (Governmental Entities) or Tax Code, §151.310 (Religious, Educational, and Public Service Organizations) only if the purchaser:

(i) allocates and bills to the contract the cost of the tangible personal property or service as a direct or indirect cost; and

(ii) transfers title to the tangible personal property to the exempt entity or organization under the contract or subcontract and any applicable acquisition regulations;

(F) the sale of a wireless voice communication device, such as a cellular telephone, to a purchaser who acquires the device for the purpose of transferring the device as an integral part of a taxable telecommunication service when the purchase of the service is a condition for receiving the device, regardless of whether there is a separate charge for the device or whether the purchaser is the provider of the taxable service. See §3.344 of this title for information about telecommunication services; and

(G) the sale of a computer program to a provider of Internet hosting services who acquires the computer program from an unrelated vendor for the purpose of selling the right to use the computer program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the computer program, without regard to whether the provider transfers care, custody, and control of the computer program to the unrelated user. The performance by the provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of this subsection. For purposes of this subsection, the purchase of the computer program by the provider qualifies as a sale for resale only if:

(i) the provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(ii) the provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iii) the unrelated user purchases the right to use the computer program from the provider through the acquisition of a license; and

(iv) the provider does not retain the right to use the computer program under that license.

(2) To qualify as a sale for resale, the taxable item must be acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

(3) A sale for resale does not include the sale of internal or external wrapping, packing, or packaging supplies to a purchaser who acquires the supplies for use in wrapping, packing, or packaging tangible personal property, or in the performance of a service, for the purpose of furthering the sale of the tangible personal property or the service. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies).

(4) A sale for resale does not include the sale of tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of performing a service not listed as a taxable service under Tax Code, §151.0101 ("Taxable Services"), regardless of whether title transfers to the service provider's customer, unless the tangible personal property or taxable service is purchased for the purpose of performing a contract, or a subcontract of a contract, for a service, including a taxable service under Tax Code, §151.0101, with any branch of the Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office to the extent allocated and billed to the contract with the federal government.

(5) A sale for resale does not include the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling or transferring the taxable item outside the territorial limits of the United States or Mexico. Refer to §3.323 of this title (relating to Imports and Exports).

(6) Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service. The care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, to have primary possession, the purchaser or the purchaser's designee must have:

(i) physical possession of the tangible personal property off of the premises of the service provider;

(ii) a contractual duty to care for the tangible personal property. At a minimum, the contract must prohibit the purchaser from damaging the tangible personal property or impose liability if the purchaser damages the tangible personal property; and

(iii) a superior right to use the tangible personal property for a contractually specified period of time.

(B) The purchaser may have primary possession of tangible personal property if the purchaser or the purchaser's designee has physical possession of the tangible personal property and directly consumes the tangible personal property during the provision of the taxable service. Property is considered consumed if it can no longer be used for its intended purpose in the normal course of business or is not retained or reusable by the service provider.

(C) A purchaser may have primary possession of a computer program if the purchaser acquires a license to use the computer program from the service provider and the service provider does not retain the right to use the computer program under that license.

(7) A person performing services taxable under Tax Code, Chapter 151 is the consumer of machinery and equipment used by the person in performing the services. A person performing a taxable service is not using the machinery or equipment in performing the service if the person has transferred primary possession, as that term is described in paragraph (6) of this subsection, of the machinery or equipment to the purchaser of the service.

(8) Aircraft. See §3.280 of this title (relating to Aircraft) for the definition of "sale for resale" as it applies to aircraft.

(9) A sale for resale does not include the sale of tangible personal property to a purchaser who acquires the property for the purpose of using, consuming, or expending it in, or incorporating it into, an oil or gas well in the performance of an oil well service taxable under Tax Code, Chapter 191 (Miscellaneous Occupation Taxes).

(c) Issuance and acceptance of resale certificates.

(1) A sale for resale as defined in subsection (b) of this section is not taxable.

(2) Who may issue a resale certificate.

(A) In general, a purchaser who holds a Texas sales and use tax permit may issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to resell, lease, rent, or transfer as an integral part of a taxable service in the normal course of business. A purchaser may also issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to maintain in a valid tax-free inventory, if the purchaser does not know at the time of purchase whether the item will be resold or used in the performance of a service. The purchaser must collect, report, and remit tax to the comptroller as required by §3.286 of this title when the purchaser sells, leases, or rents taxable items.

(B) A purchaser may not issue a resale certificate in lieu of paying tax on the purchase of a taxable item, including tangible personal property to maintain in a valid tax-free inventory, that the purchaser knows, at the time of purchase, will be used or consumed by the purchaser.

(3) Accepting a resale certificate.

(A) All gross receipts of a seller are presumed subject to sales or use tax unless a properly completed resale or exemption certificate is accepted by the seller. A properly completed resale certificate contains the information required by subsection (g) of this section. See also §3.287 of this title (relating to Exemption Certificates).

(B) A seller does not owe tax on a sale, lease, or rental of a taxable item if the seller accepts a properly completed resale certificate in good faith. A resale certificate is deemed to be accepted in good faith if:

(i) the resale certificate is accepted at or before the time of the transaction;

(ii) the resale certificate is properly completed, meaning that all of the information required by subsection (g) of this section is legible; and

(iii) the seller does not know, and does not have reason to know, that the sale is not a sale for resale. It is the seller's responsibility to be familiar with Texas sales tax law as it applies to the seller's business and to take notice of the information provided by the purchaser on the resale certificate. For example, a jewelry seller should know that a resale certificate from a landscaping service is invalid because a landscaping service is not in the business of reselling jewelry.

(C) The seller should obtain a properly executed resale certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained.

(i) The seller has 90 [~~60~~] days, or until a later date agreed to in writing by the comptroller and the seller, referred to in this section as "the period," from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller no earlier than [~~upon~~] the filing of a petition for redetermination or claim for refund.

(ii) For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date.

(iii) Any certificates delivered to the comptroller during the [~~60-day~~] period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the [~~60-day~~] period will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title.

(D) Resale certificates are subject to the provisions of §3.281 of this title (relating to Records Required; Information Required). A seller is required to keep resale certificates for a minimum of four years from the date on which the sale is made and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending.

(4) Blanket resale certificate. A purchaser may issue to a seller a blanket resale certificate describing the general nature of the taxable items purchased for resale. The seller may rely on the blanket certificate until it is revoked in writing.

(5) Bulk commodities. A resale certificate is not required to be issued by a broker or dealer that buys and sells only raw commodities in bulk, such as natural gas, raw cotton bales, or raw aluminum, from producers or other commodity brokers or dealers solely for resale in the normal course of business. However, if requested by the seller, a properly completed resale certificate, absent a sales tax permit number, may be issued by the purchaser of such raw commodities even if the purchaser does not hold a sales and use tax permit.

(6) Electricity sales and purchases by independent organization certified under Texas Utilities Code, §39.151. A resale certificate is not required to be issued by a person who purchases electricity solely for the purpose of resale from the independent organization certified under Texas Utilities Code, §39.151. The independent organization certified under Texas Utilities Code, §39.151 is not required to issue a resale certificate to a person from whom it purchases electricity solely for the purpose of resale.

(d) Retailers outside Texas.

(1) A seller in Texas may accept a resale certificate in lieu of tax from a retailer located outside Texas who purchases taxable items for resale in the United States or Mexico in a transaction that is a sale for resale, as defined in subsection (b) of this section.

(2) The resale certificate must show the signature and address of the purchaser, the date of the sale, the state in which the purchaser intends to resell the item, the sales tax permit number or the registration number assigned to the purchaser by the state in which the purchaser is authorized to do business or a statement that the purchaser is not required to be permitted in the state in which the purchaser is authorized to do business. Mexican retailers who purchase taxable items for resale must show their Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of their Mexican Registration Form to the Texas seller. An invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold must be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business. A resale certificate may be accepted from the out-of-state retailer even if the Texas retailer ships or delivers the taxable item directly to a recipient located inside Texas.

(3) The Texas retailer is not responsible for determining whether the out-of-state retailer is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(4) Foreign purchasers, other than purchasers from Mexico, who are not engaged in business in Texas and do not hold a Texas sales and use tax permit, may issue a properly completed resale certificate, as described in paragraph (2) of this subsection, in lieu of paying tax on the purchase of taxable items for sale in the normal course of business when the items are delivered or shipped to a location outside of Texas but within the United States or Mexico.

(5) An out-of-state or foreign purchaser who acquires goods or services from a Texas seller for resale in Texas should refer to §3.286 of this title for information on their responsibilities.

(6) A purchaser, whether from Texas, Mexico, or another foreign country, may not issue a resale certificate for taxable items purchased for resale outside the United States or Mexico. See subsection (b)(5) of this section. Purchasers who purchase taxable items in Texas for sale outside the United States or Mexico must comply with the requirements of §3.323 of this title to claim exemption from the Texas sales tax.

(e) Taxable use of items purchased for resale; items removed from tax-free inventory.

(1) Divergent use; paying tax on fair market rental value. When a taxable item is removed from a valid tax-free inventory for use in Texas, Texas sales tax is due. When a taxable item purchased under a resale certificate is used for any purpose other than retention, demonstration, or display while holding it for sale, lease, or rental, or for transfer as an integral part of a taxable service, the purchaser is liable for sales tax based on the value of the taxable item for the period of time used.

(A) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(B) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(C) At any time the person using a taxable item may stop paying tax on the value of the taxable item and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the original purchase price, credit will not be allowed for taxes previously paid based on value.

(2) Donation of taxable item. A purchaser who gives a valid resale certificate instead of paying tax on the purchase of a taxable item is not liable for sales tax on the taxable item when donated to an organization exempt under Tax Code, §151.309 (Governmental Entities), or §151.310(a)(1) and (2) (Religious, Educational, And Public Service Organizations), provided the purchaser did not make a taxable use of the donated taxable item prior to its donation.

(3) Use of taxable item as a trade-in. A purchaser who gives a valid resale certificate instead of paying tax on the purchase of a taxable item is liable for sales tax if the purchaser uses the taxable item as a trade-in on the purchase of another taxable item. Tax must be paid on the original purchase price of the taxable item used as a trade-in.

(4) Use of taxable item outside Texas. Texas sales or use tax is not due on a taxable item removed from a valid tax-free inventory for use by the purchaser outside the state.

(5) Lost or destroyed inventory. Texas sales or use tax is not due on tangible personal property purchased under a valid resale certificate that is totally destroyed or permanently disposed of by the purchaser in a manner other than for use or sale in the normal course of business. For example, documented theft, casualty damage or loss, or disposal in a landfill. This does not apply to consumable items that are completely used up or destroyed by the purchaser in the course of performing a service in Texas.

(f) Improper use of a resale certificate; criminal offenses.

(1) A person may not issue a resale certificate at the time of purchase for a taxable item if the person knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax is guilty of a criminal offense. For more information, see §3.305 of this title (relating to Criminal Offenses and Penalties).

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1 or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale. See also subsection (d)(2) of this section regarding registration numbers for retailers outside Texas;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially either in the form of a Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate. Copies of both certificates are available at comptroller.texas.gov or may be obtained by calling our toll-free number 1-800-252-5555. A seller may also accept as a resale certificate the Uniform Sales and Use Tax Certificate-Multijurisdiction promulgated by the Multistate Tax Commission and available online at http://www.mtc.gov. The Streamlined Sales and Use Tax Agreement Certificate of Exemption may not be accepted as a resale certificate.

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 February 15, 2022.

TRD-202200547
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 475-0387

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34 TAC §3.287

The Comptroller of Public Accounts proposes amendments to §3.287, concerning exemption certificates. The comptroller amends the section to reflect the changes in Tax Code, §151.054 (Gross Receipts Presumed Subject to Tax) and §151.104 (Sale for Storage, Use, or Consumption Presumed) made by Senate Bill 296, 87th Legislature, 2021, effective June 7, 2021.

The comptroller amends the title of subsection (d) to be consistent with the wording in §3.285 of this title (relating to Resale Certificate; Sales for Resale).

The comptroller amends subsection (d)(1) to state that a properly completed exemption certificate contains the information required by subsection (f) of this section. This change is consistent with §3.285.

The comptroller amends subsection (d)(4) to state the seller has 90 days, or a later date agreed to in writing by the comptroller and the seller, from the date written notice is received by the seller from the comptroller in which to deliver the exemption certificates to the comptroller as opposed to the current 60-day pe-

riod. Non-substantive, conforming charges are made throughout the subsection. The comptroller moves existing language to new paragraphs (4)(A)-(C) for readability. The comptroller adds cross references in paragraph (4)(C) to §3.282 and §3.286 to be consistent with §3.285.

The comptroller amends new subsection (d)(4)(A) by adding clarifying language regarding the timeframe in which written notices are issued. No substantive change is intended.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Reynolds also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §§151.054 (Gross Receipts Presumed Subject to Tax), 151.104 (Sale for Storage, Use, or Consumption Presumed), and 151.0231 (Managed Audits).

§3.287. Exemption Certificates.

(a) Definition. Exemption certificate--A document that, when properly executed, allows the tax-free purchase of an item that would otherwise be subject to tax. Except as otherwise stated, the exemption certificate described in this section refers to the Texas Sales and Use Tax Exemption Certification, Form 01-339 (Back) or a document substantially in the same format. There is no provision in Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) for an exemption number or a tax exempt number to be issued or used in connection with the Texas Sales and Use Tax Exemption Certification, Form 01-339 (Back).

(b) Who may issue an exemption certificate. An exemption certificate of the type described in this section may only be issued by one of the following:

(1) an organization that has qualified for exemption under Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations). See §3.322 of this title (relating to Exempt Organizations); or

(2) a person purchasing an item that is exempt under Tax Code, Chapter 151, Subchapter H (Exemptions).

(c) Exemptions addressed by other sections of this title: Direct payment permit holders, maquiladoras, agriculture, timber, qualifying data centers, qualified research, prior contracts and sales for resale.

(1) Purchasers using direct pay permits should refer to §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(2) Purchasers using maquiladora exemption permits should refer to §3.358 of this title (relating to Maquiladoras).

(3) Purchasers claiming an agriculture exemption should refer to §3.296 of this title (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer).

(4) Purchasers claiming a timber exemption should refer to §3.367 of this title (relating to Timber Items).

(5) Purchasers claiming a qualifying data center exemption should refer to §3.335 of this title (relating to Property Used in a Qualifying Data Center or Qualifying Large Data Center Project; Temporary State Sales Tax Exemption).

(6) Purchasers claiming a qualified research exemption should refer to §3.340 of this title (relating to Qualified Research).

(7) Purchasers claiming a prior contract exemption should refer to §3.319 of this title (relating to Prior Contracts) and §3.334 of this title (relating to Local Sales and Use Taxes).

(8) Purchasers claiming a sale for resale exemption should refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(d) Accepting an [~~Acceptance of~~] exemption certificate.

(1) All gross receipts of a seller are presumed subject to sales or use tax unless a valid and properly completed resale or exemption certificate is accepted by the seller. A properly completed exemption certificate contains the information required by subsection (f) of this section. Resale certificates are addressed in detail in §3.285 of this title.

(2) A seller does not owe tax on a sale, lease, or rental of a taxable item if the seller accepts a properly completed exemption certificate in good faith. An exemption certificate is deemed to be accepted in good faith if:

(A) the exemption certificate is accepted at or before the time of the transaction;

(B) the exemption certificate is properly completed, meaning that all of the information required by subsection (f) of this section is legible; and

(C) the seller does not know, and does not have reason to know, that the sale is not exempt. It is the seller's responsibility to be familiar with Texas sales tax law as it applies to the seller's business and to be familiar with the exemptions that are available for the items the seller sells.

(3) A person commits an offense if the person: intentionally or knowingly makes a false entry in, or a fraudulent alteration of, an exemption certification; makes, presents, or uses an exemption certificate with knowledge that it is false and with the intent that it be accepted as a valid exemption certificate; or intentionally conceals, removes, or impairs the verity or legibility of an exemption certificate or unreasonably impedes the availability of an exemption certificate.

(A) If the tax evaded by the invalid certificate is less than $20, the offense is a Class C misdemeanor.

(B) If the tax evaded by the invalid certificate is $20 or more but less than $200, the offense is a Class B misdemeanor.

(C) If the tax evaded by the invalid certificate is $200 or more but less than $750, the offense is a Class A misdemeanor.

(D) If the tax evaded by the invalid certificate is $750 or more but less than $20,000, the offense is a felony of the third degree.

(E) If the tax evaded by the invalid certificate is $20,000 or more, the offense is a felony of the second degree.

(4) The seller should obtain the properly executed exemption certificate at the time the transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained.

(A) The seller has 90 [~~60~~] days from the date written notice is received by the seller from the comptroller, or until a later date agreed to in writing by the comptroller and the seller, referred to in this section as "the period," in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller no earlier than [~~upon~~] the filing of a petition for redetermination or claim for refund.

(B) For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date.

(C) Any certificates delivered to the comptroller during the [~~60-day~~] period will be subject to independent verification by the comptroller before any exemptions will be allowed. Certificates delivered after the [~~60-day~~] period will not be accepted and the exemption will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 (relating to Seller's and Purchaser's Responsibilities) of this title.

(5) A seller may accept a blanket exemption certificate given by a purchaser who purchases only items that are exempt. For information on blanket exemption certificates received for agricultural exemptions, see §3.296 of this title. For information on blanket exemption certificates received for timber items see §3.367 of this title.

(6) An exemption certificate is not acceptable when an exemption is claimed because tangible personal property is exported outside the United States. For proper documentation required for proof of export, see §3.323 of this title (relating to Imports and Exports) and §3.360 of this title (relating to Customs Brokers).

(7) Exemption certificates are subject to the provisions of §3.281 of this title (relating to Records Required; Information Required). A seller is required to keep exemption certificates for a minimum of four years from the date on which the sale is made and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending.

(e) Taxable use of items purchased under an exemption certificate; improper use of an exemption certificate.

(1) When an item purchased under a valid exemption certificate is used in a taxable manner, whether the use is in Texas or outside the state, the purchaser is liable for payment of sales tax based on the value of the tangible personal property or taxable service for the period of time used. If the exemption certificate was invalid at the time of its issuance, the purchaser owes tax on the original purchase price.

(2) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(3) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(4) At any time, the person who purchased tangible personal property or a taxable service under a valid exemption certificate and is using the tangible personal property or taxable service in a divergent taxable manner may stop paying tax on the value of tangible personal property or taxable service and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid based on value.

(5) Sales tax is not due when a taxable item purchased under a valid exemption certificate is donated to an organization exempt from tax under Tax Code, §151.309 or §151.310(a)(1) or (2), provided the purchaser does not use the donated tangible personal property or the donated taxable service.

(6) This subsection is not applicable when an item purchased under Tax Code, §151.318 (Property Used in Manufacturing) is used in a taxable manner. A purchaser who uses such items in a taxable manner is liable for sales or use tax and should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(f) Content of an exemption certificate. An exemption certificate must show:

(1) the name and address of the purchaser;

(2) a description of the item to be purchased;

(3) the reason the purchase is exempt from tax;

(4) the signature of the purchaser and the date; and

(5) the name and address of the seller.

(g) Purchases of taxable items by agents of the Federal Deposit Insurance Corporation (FDIC). The FDIC may purchase items tax-free for use in operating a property or business to which it has title. An exemption certificate may be issued by the FDIC or by persons acting as agents for the FDIC when purchasing items that are incorporated into or used on the property or business being managed. The certificate must state that the purchases are being made by or for the FDIC. The FDIC or persons managing property or a business for the FDIC may issue an exemption certificate when:

(1) the FDIC provides documentation to the person managing the property or business showing that title to the property or business being managed was transferred to the FDIC; and

(2) the FDIC has entered into a written agreement with the person managing the property or business that designates that person as its agent and authorizes that person to make purchases on its behalf. The agreement must be in the person's files for review by the comptroller. It is not necessary to provide a copy of the agreement to suppliers.

(h) Form of an exemption certificate. An exemption certificate must be in substantially the form of a Texas Sales and Use Tax Exemption Certification, Form 01-339 (Back). Copies of the form may be obtained from the Comptroller of Public Accounts, Tax Policy Division or by calling 1-800-252-5555. The form is also available online at https://comptroller.texas.gov/forms/01-339.pdf.

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 February 15, 2022.

TRD-202200550
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §362.1. Definitions. The amendments are proposed to clarify and cleanup the section and to replace the current definition of occupational therapy practice.

The amendments revise current definitions to increase clarity and uniformity, update and/or remove outdated and/or unnecessary definitions, and remove possible redundancy. For example, the definitions of occupational therapist registered and certified occupational therapy assistant will be removed as part of the amendments and related information will be collocated under the definitions of occupational therapist and occupational therapy assistant.

Changes will also revise the definition of non-licensed personnel, including to remove a reference to on-the-job training from the definition, particularly as the definition of an occupational therapy aide in Texas Occupations Code §454.002, Definitions, already includes such a reference.

The amendments include the replacement of the current definition of occupational therapy practice with an updated and expanded definition adapted from related information from the American Occupational Therapy Association (AOTA). The change will align the definition more closely with current language available on a national level.

The amendments also include the removal of information regarding phone numbers from the definition of a complete renewal. A related proposed amendment to Texas Administrative Code §369.2, Changes of Name or Address, which would add a requirement regarding notifying the Board of phone number changes, has also been submitted for publication to the *Texas Register.*

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and revision of existing occupational therapy regulations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

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

(2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create new regulations;

(6) the rules will repeal or limit existing regulations concerning certain definitions; the rules will expand existing regulations by replacing the current definition of occupational therapy practice with an expanded version;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

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

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register.* It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.002, Definitions, §454.006, Practice of Occupational Therapy, and §454.213, Accepted Practice; Practitioner's Referral.

CROSS REFERENCE TO STATUTE

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

§362.1. Definitions.

The following words, terms, and phrases[~~,~~] when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

~~[(6) Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.]~~

~~[(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:]~~

~~[(A) A fine not to exceed $4,000;]~~

~~[(B) Confinement in jail for a term not to exceed one year; or]~~

~~[(C) [Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).]~~

(6) [~~(8)~~] Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (e.g. [~~i.e.~~], organizations, communities).

(7) [~~(9)~~] Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(8) [~~(10)~~] Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) [~~and phone number(s)~~], jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(9) [~~(11)~~] Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.

(10) [~~(12)~~] Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(11) [~~(13)~~] Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Occupational Therapy Practice Act[~~,~~] and who is applying for a Texas license for the first time.

(12) [~~(14)~~] Evaluation--The process of planning, obtaining, documenting, and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(13) [~~(15)~~] Examination--The Examination as provided for in §454.207 of the Occupational Therapy Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(14) [~~(16)~~] Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(15) [~~(17)~~] Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(16) [~~(18)~~] Intervention--The process of planning and implementing specific strategies based on the plan of care, which includes the client's desired outcome and [~~,~~] evaluation data, and evidence[~~,~~] to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(17) [~~(19)~~] Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees, applicants, and entities regulated by the Board.

(18) [~~(20)~~] Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(19) [~~(21)~~] Jurisprudence Examination--An examination covering information contained in the [~~Texas~~] Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.

(20) [~~(22)~~] License--Document issued by the Texas Board of Occupational Therapy Examiners that [~~which~~] authorizes the practice of occupational therapy in Texas.

(21) [~~(23)~~] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post-surgical [~~post surgical~~] status. Synonymous with the term health care condition.

(22) [~~(24)~~] NBCOT--National Board for Certification in Occupational Therapy.

(23) [~~(25)~~] Non-Licensed Personnel--OT Aide [~~or OT Orderly~~] or other person not licensed by this board [~~Board~~] who provides support services to and requires supervision by occupational therapy practitioners [~~and whose activities require on-the-job training and supervision~~].

(24) [~~(26)~~] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions that [~~which~~] do not require the routine intervention of a physician.

(25) [~~(27)~~] Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life, and contributing to the social and economic fabric of their communities.

(26) [~~(28)~~] Occupational Therapist (OT)--An individual who holds a [~~valid regular or provisional~~] license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist [~~or one~~] who is designated as an Occupational Therapist, Registered (OTR®).

[~~(29) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.~~]

(27) [~~(30)~~] Occupational Therapy Assistant (OTA)-- An individual who holds a [~~valid regular or provisional~~] license to practice or represent self as an Occupational Therapy Assistant in Texas[~~,~~] and who is required to be under the general [~~continuing~~] supervision of an OT. This definition includes an Occupational Therapy Assistant [~~individual~~] who is designated as a Certified Occupational Therapy Assistant (COTA®) [~~or an Occupational Therapy Assistant (OTA)~~].

(28) [~~(31)~~] Occupational Therapy Plan of Care--A written statement of the planned course of occupational therapy [~~Occupational Therapy~~] intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(29) [~~(32)~~] Occupational Therapy Practice--The practice of occupational therapy includes the following components: [~~Includes:~~]

(A) Evaluation of factors affecting activities of daily living (ADLs), instrumental activities of daily living (IADLs), health management, rest and sleep, education, work, play, leisure, and social participation, including:

(i) Context (environmental and personal factors) and occupational and activity demands that affect performance.

(ii) Performance patterns, including habits, routines, roles, and rituals.

(iii) Performance skills, including motor skills (e.g., moving oneself or moving and interacting with objects), process skills (e.g., actions related to selecting, interacting with, and using tangible task objects), and social interaction skills (e.g., using verbal and non-verbal skills to communicate).

(iv) Client factors, including body functions (e.g., neuromuscular, sensory, visual, mental, psychosocial, cognitive, pain factors), body structures (e.g., cardiovascular, digestive, nervous, integumentary, genitourinary systems; structures related to movement), values, beliefs, and spirituality.

[~~(A) Methods or strategies selected to direct the process of interventions such as:~~]

[~~(i)~~] ~~Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.~~]

[~~(ii)~~] ~~Compensation, modification, or adaptation of activity or environment to enhance performance.~~]

[~~(iii)~~] ~~Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.~~]

[~~(iv)~~] ~~Health promotion and wellness to enable or enhance performance in everyday life activities.~~]

[~~(v)~~] ~~Prevention of barriers to performance, including disability prevention.~~]

(B) Methods or approaches to identify and select interventions, such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or is in decline.

(ii) Compensation, modification, or adaptation of occupations, activities, and contexts to improve or enhance performance.

(iii) Maintenance of capabilities to prevent decline in performance in everyday life occupations.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities and quality of life.

(v) Prevention of occurrence or emergence of barriers to performance and participation, including injury and disability prevention.

[~~(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:~~]

[~~(i)~~] ~~Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).~~]

[~~(ii)~~] ~~Habits, routines, roles and behavior patterns.~~]

[(iii) ~~Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.~~]

[(iv) ~~Performance skills, including motor, process, and communication/interaction skills.~~]

(C) Interventions and procedures to promote or enhance safety and performance in ADLs, IADLs, health management, rest and sleep, education, work, play, leisure, and social participation, for example:

(i) Therapeutic use of occupations and activities.

(ii) Training in self-care, self-management, health management (e.g., medication management, health routines), home management, community and work integration, school activities and work performance.

(iii) Identification, development, remediation, or compensation of physical, neuromusculoskeletal, sensory-perceptual, emotional regulation, visual, mental, and cognitive functions; pain tolerance and management; praxis; developmental skills; and behavioral skills.

(iv) Education and training of persons, including family members, caregivers, groups, populations, and others.

(v) Care coordination, case management, and transition services.

(vi) Consultative services to persons, groups, populations, programs, organizations, and communities.

(vii) Virtual interventions.

(viii) Modification of contexts (environmental and personal factors in settings such as home, work, school, and community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility, including fitting and management of wheelchairs and other mobility devices.

(xi) Exercises, including tasks and methods to increase motion, strength, and endurance for occupational participation.

(xii) Remediation of and compensation for visual deficits, including low vision rehabilitation.

(xiii) Driver rehabilitation and community mobility.

(xiv) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xv) Application of physical agent and mechanical modalities and use of a range of specific therapeutic procedures (e.g., wound care management; techniques to enhance sensory, motor, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(xvi) Facilitating the occupational participation of persons, groups, or populations through modification of contexts (environmental and personal) and adaptation of processes.

(xvii) Efforts directed toward promoting occupational justice and empowering clients to seek and obtain resources to fully participate in their everyday life occupations.

(xviii) Group interventions (e.g., use of dynamics of group and social interaction to facilitate learning and skill acquisition across the life course).

[~~(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:~~]

[(i) ~~Therapeutic use of occupations, exercises, and activities.~~]

[(ii) ~~Training in self-care, self-management, home management and community/work reintegration.~~]

[(iii) ~~Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.~~]

[(iv) ~~Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.~~]

[(v) ~~Education and training of individuals, including family members, caregivers, and others.~~]

[(vi) ~~Care coordination, case management and transition services.~~]

[(vii) ~~Consultative services to groups, programs, organizations, or communities.~~]

[(viii) ~~Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.~~]

[(ix) ~~Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.~~]

[(x) ~~Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.~~]

[(xi) ~~Driver rehabilitation and community mobility.~~]

[(xii) ~~Management of feeding, eating, and swallowing to enable eating and feeding performance.~~]

[(xiii) ~~Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.~~]

(30) [~~(33)~~] Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this board [~~Board~~].

(31) [~~(34)~~] Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(32) [~~(35)~~] Place(s) of Business--Any facility in which a licensee practices.

(33) [~~(36)~~] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this board [~~Board~~] may practice occupational therapy in Texas, and the site of practice is the location

in Texas where the client is located at the time of the provision of services.

(34) [~~(37)~~] Rules--Refers to the TBOTE Rules.

(35) [~~(38)~~] Screening--A process used to determine a potential need for occupational therapy interventions[~~,~~] and educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(36) [~~(39)~~] Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational therapy practitioner to a client at a different physical location using telecommunications or information technology. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this board [~~Board~~] with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health 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 February 18, 2022.

TRD-202200580
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 305-6900

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CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.2, §369.3

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §369.2, Changes of Name or Address, and §369.3, Use of Titles. The proposed amendments to §369.2 add a requirement to notify the Board of phone number changes and revise the rule title. The proposed amendments to §369.3 cleanup and clarify the section and add information regarding the use of the title doctor.

Amendments to §369.2, Changes of Name or Address, would require licensees to update the Board of phone number changes, and a related amendment would change the title of the section from "Changes of Name or Address" to a more comprehensive title, "Change of Name or Contact Information." Concomitant with such changes, a proposed amendment to 40 Texas Administrative Code §362.1, Definitions, has also been submitted to the *Texas Register* for publication and would remove information regarding phone numbers from the definition of a complete renewal.

Changes to §369.3 would clarify and cleanup current provisions regarding the use of titles to increase clarity and consistency in the section.

An additional change to the section is a reference to Occupational Therapy Practice Act §454.007, Use of Title of Doctor. The amendment provides that the use of the title doctor is governed by §454.007.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and increased uniformity of existing occupational therapy regulations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

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

(2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new regulation in the Occupational Therapy Rules concerning the use of the title of doctor; however, they will not create a new requirement as the Occupational Therapy Practice Act already includes a regulation regarding such;

(6) the rules will not repeal or limit an existing regulation; the rules will expand an existing regulation to add that licensees update the Board of phone number changes, though a related re-

quirement is currently included under the definition of a complete renewal in 40 Texas Administrative Code §362.1, Definitions;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

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

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register.* It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.007, Use of Title of Doctor, and §454.201, License Required; Use of Title.

CROSS REFERENCE TO STATUTE

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

§369.2. Changes of Name or Contact Information [~~Address~~].

(a) A licensee or applicant shall notify the Board in writing of changes in name, phone number, business phone number, residential address, business address, mailing address, and/or email address within 30 days of such change(s). Applicants and temporary licensees, in addition, shall notify the Board in writing of changes of supervisor within 30 days of such change(s). A copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing a change in name must be submitted by the licensee or applicant with any written notification of a change in name. To request a replacement copy of the license to reflect a name change, refer to §369.1 of this title (relating to Display of Licenses).

(b) The address of record is the physical address that will be provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.

(c) Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

§369.3. Use of Titles.

(a) Licensed occupational therapists [~~A licensed occupational therapist~~] shall use the title occupational therapist or the abbreviation [~~initials~~] OT. Occupational Therapist, Registered is an alternate title for occupational therapist and OTR® is an alternate abbreviation [~~term~~] for OT if individuals [~~an individual~~] who are [~~is~~] licensed by this board take [~~takes~~] the responsibility for ensuring that they are [~~he or she is~~] qualified to use such [~~it~~] by maintaining certification through NBCOT.

(b) Licensed occupational therapy assistants [~~A licensed occupational therapy assistant~~] shall use the title occupational therapy assistant or the abbreviation [~~initials~~] OTA. Certified Occupational Therapy Assistant is an alternate title for occupational therapy assistant and COTA® is an alternate abbreviation [~~term~~] for OTA if individuals [~~an individual~~] who are [~~is~~] licensed by this board take [~~takes~~] the responsibility for ensuring that they are [~~he or she is~~] qualified to use such [~~it~~] by maintaining certification through NBCOT.

(c) No other titles or abbreviations [~~initials~~] are conferred for a license from this board.

(d) The use of the title doctor is governed by §454.007 of the Act (relating to Use of Title of Doctor).

[~~(d) Except when practicing as an occupational therapy practitioner in a higher education setting or when signing as an author for a publication, and that publication requires a recognized publication format, any letters designating other titles, academic degrees, or certifications must follow the initials OT or OTA (example John Doe, OT, CHT or Jane Doe, OTR, PhD).~~]

(e) The titles and abbreviations described by subsections (a) and (b) of this section must precede any other titles, abbreviations, academic degrees, or certifications (example: John Doe, OT, CHT or Jane Doe, OTR, PhD) with the following exception: if an occupational therapy practitioner is practicing in a higher education setting or is signing as an author for a publication that requires a recognized publication format, then the titles or abbreviations described by subsections (a) or (b) of this section may follow other titles, abbreviations, academic degrees, or certifications (Ex: John Doe, CHT, OT or Jane Doe, PhD, OTR).

(f) [~~(e)~~] Limitations. A person who does not hold a license to practice occupational therapy in Texas may not use any of the following terms in conjunction with the person's [~~their~~] business, work, or services:

(1) "occupational therapist," "licensed occupational therapist," "occupational therapist, registered";[~~;"~~]

(2) "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant";[~~;"~~]

(3) "OT," "OTR," "LOT," "OTR/L";[~~;"~~]

(4) "OTA," [~~"LOTA,"~~] "COTA," "LOTA," "COTA/L";[~~;"~~]

or

(5) any other words, letters, abbreviations, or insignia indicating or implying that the person [~~he or she~~] is an occupational therapist or an occupational therapy assistant.

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

Filed with the Office of the Secretary of State on February 17, 2022.

TRD-202200581

Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 305-6900

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CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §371.2, Retired Status. The changes are proposed to revise requirements concerning voluntary charity care.

The changes would remove the requirement that the voluntary charity care that licensees on retired status may offer may only be provided for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. The changes will expand the possible opportunities licensees on retired status have to offer voluntary charity care.

The changes also include a cleanup to the section to change "OT Practice Act" to "Occupational Therapy Practice Act" to achieve greater uniformity in the board rules.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the possible expansion of the opportunity for occupational therapy services and the cleanup of occupational therapy regulations. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

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

(2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create new regulations in the Occupational Therapy Rules;

(6) the rule will not expand or repeal existing regulations; the rule will limit existing regulations by removing the requirement that voluntary charity care may only be offered for certain organizations;

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

(8) the rule will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rule is not subject to Texas Government Code §2001.0045 as the rule does not impose a cost on regulated persons. In addition, the rule does not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

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

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register.* It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and under Texas Occupations Code §112.051, Reduced License Requirements for Retired Health Care Practitioners Performing Charity Work, which requires each licensing entity to adopt rules providing for reduced fees and continuing education requirements for a retired

health care practitioner whose only practice is voluntary charity care.

CROSS REFERENCE TO STATUTE

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

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "Voluntary charity care" means occupational therapy services provided as a volunteer with no compensation[~~, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety~~].

(2) "Compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year. The license may only be put on retired status at the time of renewal.

(c) Requirements for initial retired status are:

(1) a completed retired status form;

(2) a passing score on the jurisprudence examination;

(3) completion of 6 hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter;

(4) the retired status fee and any late fees that may be due; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) a completed retired status form;

(2) a passing score on the jurisprudence examination;

(3) the retired status fee and any late fees that may be due;

(4) completion of 6 hours of continuing education each license renewal period as described in Chapter 367 of this title (relating to Continuing Education) that includes training on human trafficking as described in that chapter; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the active status renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal) and 18 additional hours of continuing education as described in Chapter 367 of this title (relating to Continuing Education). A licensee who has been on retired status for one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License).

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the Occupational Therapy [~~OT~~] Practice Act.

(i) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

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 February 18, 2022.

TRD-202200582
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 305-6900

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §372.1, Provision of Services. The changes are proposed to cleanup and clarify the section and revise requirements regarding the provision of occupational therapy services, including services delivered via telehealth.

Changes to the section include those that would clarify requirements concerning the provision of occupational therapy services. For example, a provision would be added that would clarify that the occupational therapist is responsible for determining whether an evaluation is needed and if a referral is required for an occupational therapy evaluation.

The changes are also proposed to clarify provisions regarding telehealth and the required client contact with an occupational therapy practitioner. For example, the amendments would clarify that when such contact may be in person or via telehealth, a combination of in-person contact and telehealth may be used.

The changes would also revise requirements concerning the contact required for an intervention session and would allow for such contact to also be satisfied by synchronous audio contact, provided that the occupational therapy practitioner makes use of store-and-forward technology in preparation for or during the intervention session. The changes include adding a definition of store-and-forward technology.

In addition, the amendments include the removal of a provision that requires the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client. The change may facilitate the possible expansion of occupational therapy services for consumers and allow for the occupational therapy practitioner, as applicable, to make determinations regarding the initial applications of such devices in compliance with further sections of the Occupational Therapy Practice Act and Board Rules, including Texas Administrative Code §373.1, Supervision of Non-Licensed Personnel, proposed changes concerning which, including concerning the initial application of adaptive/assistive equipment and splints, have also been submitted for publication to the *Texas Register.*

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup and clarification of existing occupational therapy regulations and the possible expansion of the opportunity for occupational therapy services. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

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

(2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create new regulations in the Occupational Therapy Rules;

(6) the rules will repeal in the section an existing regulation concerning the initial application of certain devices; the rules will expand existing regulations concerning the method of contact for an intervention session; the rules will not limit an existing regulation;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

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

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordina-

tor, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register.* It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.006, Practice of Occupational Therapy, and §454.213, Accepted Practice; Practitioner's Referral.

CROSS REFERENCE TO STATUTE

Proposed amendments to §372.1(e) and §372.1(f) implement Texas Occupations Code §111.007, Standard of Care for Telemedicine Medical Services, Teledentistry Dental Services, and Telehealth Services, which addresses the provision of health care services via telehealth.

§372.1. Provision of Services.

(a) Medical Conditions.

(1) Occupational therapists may evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(b) Non-Medical Conditions. The evaluation or intervention for a non-medical condition does not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.

(c) Methods of Referral[~~/Plan of Care documentation~~]. The referral [~~or signed plan of care~~] must be from a licensed referral source in accordance with the Occupational Therapy Practice Act[~~,~~] §454.213 (relating to Accepted Practice; Practitioner's Referral)[~~,~~] and may be transmitted in the following ways:

(1) by a written document, including paper or electronic information/communications technologies;

(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this subsection, [~~section,~~] "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally; or

(3) by an occupational therapy plan of care, developed according to the requirements of this section, that is signed by the licensed referral source.

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner without a referral.

(e) Evaluation.

(1) The occupational therapist is responsible for determining whether an evaluation is needed and if a referral is required for an occupational therapy evaluation.

(2) [~~(1)~~] Only an occupational therapist may perform an initial evaluation or any re-evaluations.

(3) [~~(2)~~] An occupational therapy plan of care must be based on an occupational therapy evaluation.

(4) [~~(3)~~] The occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person.

[~~(4) The occupational therapist must have contact with the client during the evaluation via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.~~]

(5) The occupational therapist must have contact with the client during the evaluation. The contact must be synchronous audio and synchronous visual contact that is in person, via telehealth, or via a combination of in-person contact and telehealth. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.

(6) [~~(5)~~] The occupational therapist may delegate to an occupational therapy assistant the collection of data for the evaluation. The occupational therapist is responsible for the accuracy of the data collected by the occupational therapy assistant.

(f) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify, or complete an occupational therapy plan of care. It is a violation of the Occupational Therapy [~~OT~~] Practice Act for anyone other than the occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the Occupational Therapy Practice [~~OT~~] Act and Rules.

(2) Modifications to the plan of care must be documented.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) Except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person.

(8) The occupational therapy practitioner must have contact with the client during the intervention session.

(A) The contact must be either:

(i) synchronous audio and synchronous visual contact that is in person, via telehealth, or via a combination of in-person contact and telehealth; or

(ii) synchronous audio contact, provided that the occupational therapy practitioner makes use of store-and-forward tech-

nology in preparation for or during the intervention session. The synchronous audio contact may be in person and/or via telehealth. In this subsection, "store-and-forward technology" means technology that stores and transmits or grants access to a client's clinical information for review by an occupational therapy practitioner at a different physical location than the client.

(B) Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.

[(8) The occupational therapy practitioners must have contact with the client during the intervention session via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.]

[(9) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, or therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.]

(9) [(10)] Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant tasks that they both agree are within the competency level of that occupational therapy assistant.

(g) Documentation.

(1) The client's records include the medical referral, if required; the initial evaluation; the plan of care, including [, and the plan of care. The plan of care includes the initial evaluation;] the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any patient related documents; and the discharge or discontinuation of occupational therapy services documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and [and/or] modalities provided.

(3) In each intervention note, the occupational therapy assistant must include the name of an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. The occupational therapist in the intervention note may be different from the occupational therapist who wrote the plan of care. The occupational therapy assistant may not provide services unless this requirement is met.

(h) Discharge or Discontinuation of Occupational Therapy Services.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge or discontinuation of occupational therapy services is based on whether the client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must complete and sign the discharge documentation, including reviewing any information from the occupational therapy assistant(s); determining if goals were met or not; and making recommendations for any further needs of the client in another continuum of care, should such further needs exist.

[(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge or discontinuation of occupational therapy services documentation, and/or make recommendations for any further needs of the client in another continuum of care.]

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 February 18, 2022.

TRD-202200583
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 305-6900

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CHAPTER 373. SUPERVISION

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §373.1, Supervision of Non-Licensed Personnel. The proposed changes cleanup and clarify the section and revise requirements concerning the supervision required for the delegation of certain tasks to non-licensed personnel.

The section currently includes a list of tasks that an occupational therapy practitioner may delegate to non-licensed personnel. Changes to the section would remove general items that are not specific to occupational therapy practice. Such items concern routine department maintenance, transportation of clients, preparation or set up of intervention equipment and work area, and assisting clients with their personal needs during the intervention.

The changes would also include the removal of a provision that requires the on-site presence of the occupational therapy practitioner for the initial application of adaptive/assistive equipment and splints. The change will enable services to be provided via telehealth, make occupational therapy services more accessible for consumers, and allow the occupational therapy practitioner to determine when on-site supervision is necessary.

A proposed change to 40 Texas Administrative Code §372.1, Provision of Services, regarding removing a requirement concerning the on-site presence of the occupational therapy practitioner for the initial application of devices that are in sustained skin contact with the client, has also been submitted for publication to the *Texas Register*.

The section also includes a change to add the clarifying phrase "of the services provided" with regard to the requirement as per subsection (c) of the section that "Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight."

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state

or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup and clarification of existing occupational therapy regulations and the possible expansion of the opportunity for occupational therapy services. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

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

(2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create new regulations in the Occupational Therapy Rules;

(6) the rules will repeal existing regulations concerning certain tasks that require the supervision of an occupational therapy practitioner and will limit existing regulations concerning the supervision required for the initial application of certain devices; the rules will not expand an existing regulation;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

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

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register.* It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, including regarding §454.002, Definitions.

CROSS REFERENCE TO STATUTE

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

§373.1. Supervision of Non-Licensed Personnel.

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-licensed personnel must be under the supervision of an occupational therapy practitioner.

(b) Supervision in this section for occupational therapy aides as defined by the Occupational Therapy Practice Act[,] §454.002 (relating to Definitions)[,] is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client.

(c) Supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner maintain line of sight of the services provided.

(d) When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(e) The occupational therapy practitioners providing the intervention must interact with the client regarding the client's condition, progress, and/or achievement of goals during each intervention session.

(f) Delegation of tasks to non-licensed personnel includes, but is not limited to:

~~[(1) routine department maintenance;]~~

~~[(2) transportation of clients;]~~

[~~(3) preparation or set up of intervention equipment and work area;~~]

[~~(4) assisting clients with their personal needs during the intervention;~~]

(1) [~~(5)~~] assisting in the construction of adaptive/assistive equipment and splints. The licensee must be [~~on-site and~~] attending for any initial applications to the client. When telehealth may be used for the supervision of non-licensed personnel as described in this section, the licensee may attend via telehealth, provided the licensee maintains line of sight of the services provided;

(2) [~~(6)~~] carrying out a predetermined segment or task in the client's care for which the client has demonstrated some previous performance ability in executing the task.

(g) The Non-Licensed Personnel may not:

(1) perform occupational therapy evaluative procedures;

(2) initiate, plan, adjust, or modify occupational therapy procedures;

(3) act on behalf of the occupational therapist in any matter relating to occupational therapy that [~~which~~] requires decision making or professional judgments;

(4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

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 February 18, 2022.

TRD-202200584
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 3, 2022
For further information, please call: (512) 305-6900

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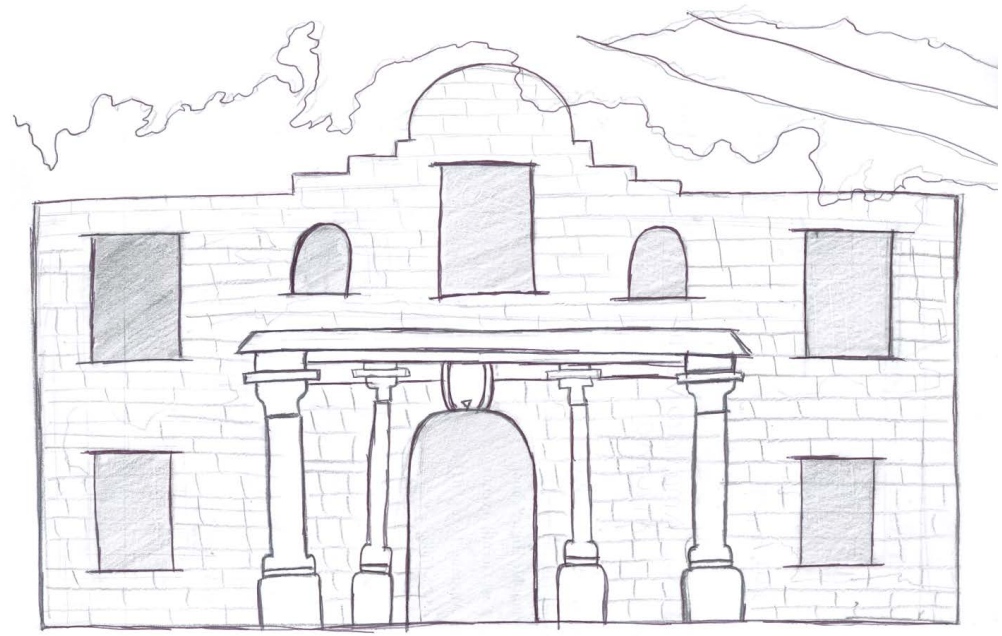

ADOPTED RULES

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 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

DIVISION 1. REGISTRATION PROCEDURES

7 TAC §85.1011

The Finance Commission of Texas (commission) adopts amendments to §85.1011 (relating to Fees) in 7 TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The commission adopts the amendments to §85.1011 without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9139). The rule will not be republished.

The rules in 7 TAC Chapter 85, Subchapter B govern crafted precious metal dealers. In general, the purpose of the rule changes to 7 TAC §85.1011 is to implement SB 1132 (2021) by adjusting annual registration fees for crafted precious metal dealers.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

The Texas Legislature passed SB 1132 in the 2021 legislative session. SB 1132 amended Texas Occupations Code, Chapter 1956, Subchapter B by adding new Section 1956.06131, which authorizes the OCCC to examine the places of business of crafted precious metal dealers, and requires the OCCC to examine at least 10 dealers each calendar year. SB 1132 also amended Texas Occupations Code, §1956.0612(c), to specify that the OCCC shall prescribe a registration processing fee in an amount necessary to cover the costs of administering Chapter 1956, Subchapter B. The OCCC is responsible for the costs of its operations. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency, and may set fees in amounts necessary for the purpose of carrying out its functions.

The amendments to §85.1011 implement SB 1132 by adjusting annual registration fees for crafted precious metal dealers. An amendment to subsection (a) increases the annual registration fee for permanent locations from $50 to $70. An amendment to subsection (b) increases the annual registration fee for temporary locations from $25 to $40.

The OCCC believes that a $20 increase to registration fees will enable the OCCC to cover the additional costs resulting from examinations of crafted precious metal dealers, as required by SB 1132. The OCCC currently employs financial examiners who examine licensed nondepository financial institutions throughout Texas. To implement SB 1132, some of these examiners will receive training on requirements for crafted precious metal dealers, and will spend a portion of their time traveling and examining dealers. Based on its previous experience in conducting financial examinations, the OCCC anticipates that the new examinations will result in approximately $19,950 of additional costs for the first year, and approximately $11,970 of additional costs for subsequent years. Based on an average total number of crafted precious metal dealer registrations of 600, the OCCC anticipates that the $20 increase will provide $12,000 of revenue per year to cover the cost of the examination program.

The commission received no written comments on the proposal.

The rule changes are adopted under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B. In addition, Texas Occupations Code, §1956.0612(c) (as amended by SB 1132) authorizes the OCCC to prescribe a registration fee in an amount necessary to cover the costs of administering Texas Occupations Code, Chapter 1956, Subchapter B. Texas Finance Code, §16.003(c) authorizes the OCCC to set fees as necessary to carry out its functions.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 1956, Subchapter B.

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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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

The Finance Commission of Texas (commission) adopts amendments to §88.104 (relating to Updating Application and Contact Information), §88.110 (relating to Denial, Suspension, or Revocation Based on Criminal History), §88.202 (relating to Annual Report), §88.304 (relating to Credit Counseling Standards), and §88.306 (relating to Fees for Debt Management Services), in 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

The commission adopts the amendments to §§88.104, 88.110, and 88.304 without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9140). The rules will not be republished.

The commission adopts the amendments to §88.202 and §88.306 with changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9140). The rules will be republished.

The rules in 7 TAC Chapter 88 govern debt management providers. In general, the purpose of the rule changes to 7 TAC Chapter 88 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 88 was published in the *Texas Register* on October 1, 2021 (46 TexReg 6547). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Amendments to §88.104 add a new subsection (b) specifying that debt management registrants must provide certain updated information within 30 calendar days after the registrant has knowledge of a change in the information. The information includes the name or operating name of the registrant, location of any offices, websites, names of principal parties, and criminal history. Current subsection (b) already provides that registrants are responsible for ensuring that all contact information on file with the OCCC is current and correct, but the current rule does not provide a deadline for providing updated contact information. The new subsection specifies a 30-day deadline for providing update information, similar to other OCCC rules that contain a 30-day deadline for licensees to provide updated contact information. The OCCC requires current and correct information about registrants in order to carry out its responsibilities under Texas Finance Code, Chapter 394.

Amendments to §88.110 relate to the OCCC's review of the criminal history of a debt management applicant or registrant. The OCCC is authorized to review criminal history of debt management applicants and registrants under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109 and §394.204; and Texas Government Code, §411.095. The amendments to §88.110 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §88.110 implement these statutory changes from HB 1342. Other amendments to §88.110 include technical corrections, clarifying changes, and updates to citations.

Amendments to §88.202 specify information that debt management registrants must submit with annual reports. Amendments throughout §88.202 add descriptions of information that registrants must provide annually under Texas Finance Code, §394.205 and §394.206, and add citations to these statutory provisions. These amendments are intended to help registrants comply with reporting requirements by clearly identifying information required by the statute. The amendments remove current §88.202(b)(2), which requires a registrant to provide a list of all owners and principal parties with the annual report. The OCCC anticipates that this list will no longer be necessary based on the amendments to §88.104 described earlier in this adoption, and believes that removing this list will simplify the reporting process. New §88.202(d) specifies that the annual report must be verified by oath or affirmation, as required by Texas Finance Code, §394.205(c), and requires registrants to certify that they have reviewed contact information and submitted any updates in accordance with the OCCC's instructions.

Since the proposal, changes have been made in §88.202(b) to further simplify reporting of information about consumer counseling. Under Texas Finance Code, §394.208(a)(1), before enrolling a consumer in a debt management plan, a provider must provide individualized counseling and educational information to the consumer. Currently, §88.202(b)(3) requires providers to include information about credit counseling with the annual report, including the number of credit counselors employed and the name of the accreditation organization. The adoption removes this provision and replaces it with new §88.202(b)(4), requiring the provider to state whether it has provided individualized counseling to each consumer. Combined with the amendment to §88.304(b) described in the following paragraph, this change will simplify annual reporting requirements relating to credit counseling, while maintaining the requirement to provide this information to the OCCC upon request.

An amendment to §88.304(b) removes language that currently requires providers to submit documentation of the certification of the provider's credit counselors with the annual report. The OCCC believes that removing this requirement will simplify the reporting process. The amendments maintain current language requiring a provider to provide this information upon request by the OCCC. The amendments also replace "commissioner" with "OCCC" in this subsection to ensure consistency with other rules.

Amendments to §88.306 add citations to statutory limitations on fees for debt management services. Currently, this section states that a provider may not charge for services unrelated to debt management or financial education unless approved by the commissioner. Under Texas Finance Code, §394.210(a), a debt management provider may not charge any fees other than fees that are authorized by Texas Finance Code, §394.210. New §88.306(a) includes a reference to this statutory section and explains that providers may not impose a fee or other charge except as authorized by the statute. The amendments remove the phrase "unless approved by the commissioner in advance" from the current rule, because fees for services unrelated to debt management or financial education are not authorized by Texas Finance Code, §394.210. Although the commissioner may authorize certain counseling and education fees under Texas Fi-

nance Code, §394.210(d), this does not include fees for unrelated services. New §88.603(c) explains that the OCCC will periodically compute and publish adjustments to debt management fees, as provided by Texas Finance Code, §394.2101.

Since the proposal, a change has been made in §88.306(c) to specify the base year for purposes of the fee adjustments described in the previous paragraph. Under Texas Finance Code, §394.2101(a), the OCCC is authorized to adopt a base year for purposes of adjustments to debt management fees. The Texas Legislature added this language in 2011 (under SB 141). For this reason, new language in §88.306(c) explains that the OCCC has adopted 2011 as a base year for purposes of these adjustments.

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §88.104, §88.110

The rule changes are adopted under Texas Finance Code, §394.214(a), which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 394.

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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Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
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SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.202

The rule changes are adopted under Texas Finance Code, §394.214(a), which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 394.

§88.202. Annual Report.

(a) General requirement. Each authorized debt management services provider must file an annual report under this section and must comply with all instructions from the OCCC relating to submitting the report.

(b) Annual report. Each year, at the time of annual renewal, an authorized debt management services provider must file with the OCCC, in a form prescribed by the OCCC, a report that contains the following:

(1) if the provider is a nonprofit or tax exempt organization, the assets and liabilities at the beginning and end of the reporting period, as required by Texas Finance Code, §394.205(b)(1);

(2) the total number of debt management plans the provider has initiated on behalf of consumers in Texas during the reporting period, as required by Texas Finance Code, §394.205(b)(2);

(3) the total and average fees charged to consumers, including all voluntary contributions received from consumers, as required by Texas Finance Code, §394.205(b)(3); and

(4) if the provider has initiated one or more debt management plans during the reporting period, a statement of whether the provider provided individualized counseling to each consumer through the services of an independently certified counselor, as required by Texas Finance Code, §394.208(a)(1).

(c) Required documents. A provider must submit the following additional documents with the annual report, in accordance with the OCCC's instructions:

(1) a blank copy of any debt management services agreement used by the provider, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of a previously submitted agreement);

(2) blank copies of the provider's consumer educational information, individualized financial analysis, initial debt management plan, and any other required disclosures relating to credit counseling, as required by Texas Finance Code, §394.205(d) (the OCCC may allow a provider to certify current use of previously submitted information); and

(3) a copy of the provider's surety bond or a compliant insurance policy, as required by Texas Finance Code, §394.206(a).

(d) Certification. An annual report must be verified by the oath or affirmation of the owner, manager, president, chief executive officer, or chairman of the board of directors of the provider, as required by Texas Finance Code, §394.205(c). The provider must certify that the provider has reviewed all contact information and principal party information on file with the OCCC, and has submitted any updates to this information in accordance with the OCCC's instructions.

(e) Other information. Upon request by the OCCC, the provider must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year.

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

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.304, §88.306

The rule changes are adopted under Texas Finance Code, §394.214(a), which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 394.

§88.306. Fees for Debt Management Services.

(a) Limitation on fees. The maximum fees for debt management services are described by Texas Finance Code, §394.210. A provider may not impose a fee or other charge, or receive payment from a consumer or other person on behalf of a consumer, except as allowed under Texas Finance Code, §394.210.

(b) Fees for unrelated services. A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance.

(c) Adjustment of fee amounts. As provided by Texas Finance Code §394.2101, the OCCC will periodically compute and publish dollar amounts of fees specified in Texas Finance Code, §394.210, to reflect inflation as measured by the Consumer Price Index for All Urban Consumers. These adjustments will be published on the OCCC's website. For purposes of these adjustments, the OCCC has adopted 2011 as a base year.

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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE
SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURES

13 TAC §26.20, §26.23

The Texas Historical Commission (Commission) adopts amendments to §26.20 and §26.23, relating to the Application for Historic Buildings and Structures Permits and Reports Relating to Historic Buildings and Structures Permits, Title 13, Part 2, Chapter 26 Subchapter D of the Texas Administrative Code. The rules are adopted without changes to the proposed text as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7937). The rules will not be republished.

Section 26.20 prescribes the process of applying for Historic Buildings and Structures permits with additional direction in §26.23 for the accompanying reports and photographs relating to Historic Buildings and Structures permits.

The adopted rule revisions change the paper-based application and report process to digital format submitted through electronic processes.

PUBLIC COMMENT

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

These amendments are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission, which grants the Commission the power to adopt rules to administer Chapter 26 of the Texas Government Code. No other code, article, or regulation is affected.

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

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Mark Wolfe
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-6100

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS
DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010 is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 4, 2022, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §100.1010, concerning performance frameworks. The amendment is adopted with changes to the proposed text as published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5523) and will be republished. The amendment adopts in rule the *2020 Charter School Performance Framework (CSPF) Manual,* which is updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

REASONED JUSTIFICATION: Section 100.1010 was adopted to be effective on September 18, 2014, and was last amended to be effective June 11, 2020. The rule is issued under Texas Education Code (TEC), §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks (charter schools measured under standard accountability and charter schools measured under alternative education accountability) consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The adopted amendment replaces the *2019 CSPF Manual* with the *2020 CSPF Manual.* The 2020 version of the manual presents no significant changes from 2019 except the following.

TEA received approval from the U.S. Department of Education (USDE) on March 30, 2020, to waive statewide assessment and accountability requirements under the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, for the 2019-2020 school year. Consequently, for 2020 state academic accountability all Texas districts and campuses will receive a label of Not Rated: Declared State of Disaster.

Throughout the manual, language has been revised with technical edits, including changing the naming conventions from framework to standard for consistency with statute.

Changes were made to the rule and manual since published as proposed. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 3, 2021, and ended October 4, 2021. Following is a summary of the public comments received and agency responses.

Comment: A school district employee recommended the indicator for Teacher Qualifications should receive more points on the CSPF and that the CSPF should not be used in the consideration of charter school expansion and amendments. The recommendation also included the expansion of stakeholder groups for the development of the CSPF, an update to the definition of 'high-quality' to ensure charter schools serve special populations for a full academic year, and the addition of indicators for class size, teacher turnover, student attrition, closed campuses, and student expenditures.

Response: The agency disagrees and provides the following clarification. The agency reviews and evaluates indicators annually, including feedback from various stakeholder groups. In the current CSPF, the indicators remain consistent with previous years and effectively measure charter school performance. Regarding expansion and amendments, this comment is not relevant to the proposed rule. Regarding the definition 'high-quality,' this comment is not relevant to the proposed rule proposal.

Comment: An individual commented that public schools should not be held accountable for the performance of special population students because charter schools are not held similarly accountable.

Response: The agency provides the following clarification. The CSPF maintains indicators that measure program requirements for special populations, and all public schools will be held to the same standards. TEA received approval from the USDE on March 30, 2020, to waive statewide assessment and accountability requirements under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable.

Comment: An individual commented that the proposal is unfair and detrimental to students in the public education system.

Response: The agency disagrees and provides the following clarification. The CSPF, which is required by TEC, §12.1181, is designed to provide parents, the public, charter operators, and the authorizer with information about each charter school's performance. The CSPF is aligned to academic, financial, operational, and governance standards set forth in the TEC. These standards for charter school performance are clear, rigorous, and quantifiable and provide a comprehensive body of data reflective of the charter school's performance. The CSPF is aligned with the Texas A-F accountability rating system, the Charter Financial Integrity Rating System of Texas, and best practices that have been identified by the National Association of Charter School Authorizers.

Comment: An individual questioned why special population students are being singled out and whether the purpose of these changes is to increase charter school scores.

Response: The agency disagrees and provides the following clarification. The CSPF is not singling out special populations. All charter schools and public schools will be scored as Not Rated: Declared State of Disaster for 2020 state academic accountability. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: Four hundred and seventeen individuals from various organizations voiced opposition to the proposed rule, stating the rule would change the requirements for charter schools, permitting them to not be held accountable for the performance of special population students. These commenters recommended that charter schools should be monitored and held accountable for these standards just as public schools in independent school districts are.

Response: The agency provides the following clarification. The agency will continue to measure charter school special

populations. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: An individual voiced opposition to the rule change, stating charter schools would no longer be held accountable for being out of compliance with educational, operational, governance, and reporting requirements for special population students.

Response: The agency provides the following clarification. The agency will continue to measure charter school special populations. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: A former school district employee commented that charter schools would not be held accountable for the performance of special population students and the proposal is unfair and detrimental to students in the public education system.

Response: The agency provides the following clarification. The agency will continue to measure charter school special populations. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: A school district employee commented that if charter schools are not held accountable for the performance of the special population students, they will not prioritize special population students.

Response: The agency provides the following clarification. The agency will continue to measure charter school special populations. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from the on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: A former educator commented that the proposal to delete the performance program requirements for special populations in charter schools is not acceptable. The educator stated that this proposal provides the potential for charter schools to not invest in the hiring or training of teachers with those certifications. Additionally, the educator stated that the proposal protects charters from punitive consequences, may impact the reporting and identification of special population students, and is misleading to the public.

Response: The agency disagrees and provides the following clarification. The agency will continue to measure performance of charter school special populations. The indicators for program requirements related to special populations remain in the CSPF. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: The Texas Public Charter School Association voiced strong support for holding charter schools accountable for the academic outcomes for all student groups, including special populations, and stated that Texas public charter schools are subject to more rigorous accountability requirements than traditional independent school districts for these student groups. The group commented that, due to the pandemic, certain data are not available to make these determinations.

Response: The agency agrees and provides the following clarification. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under the ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF. CSPF Manual has been

modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable.

Comment: Texas Association of School Boards, commenting on behalf of the association and 20 other education stakeholder groups, requested a revision of the CSPF to better reflect TEA's stated intent for the CSPF to inform parents, the public, charter schools, and the authorizer about charter school performance. The group agreed the 2020 CSPF should be informational only and that the CSPF should not inform decisions for expansion and renewal. The group also recommended the expansion of stakeholder groups' formal involvement in the revision of the CSPF. Finally, the group recommended the inclusion of additional indicators including class size, teacher turnover, student attrition, closed charter campuses, and student expenditures.

Response: The agency disagrees in part and provides the following clarification. The development of the CSPF includes stakeholder-group-provided input, and the indicators adequately inform the public and agency about charter school performance. The agency will continue to address the effectiveness of the CSPF annually through stakeholder group feedback, review, and revision. Regarding expansion and renewal, these comments are not relevant to the proposed rule.

Comment: The Texas American Federation of Teachers recommended the group's involvement with the development of the CSPF and disagreed with the elimination of indicators related to special population student groups.

Response: The agency disagrees and provides the following clarification. The agency continues to collect data and to monitor the program requirements for special populations. Indicators concerning special population student groups remain in the CSPF. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comment: A representative of the Texas School Alliance agreed that the CSPF should be informational only and recommended a pause on all expansions. The commenter disagreed with the removal of performance requirements and handling of secure assessment material indicators. The commenter recommended keeping the indicators and scoring them as not applicable. The commenter requested clarification on page 25, indicator 1a, regarding the inclusion of end-of-course exams.

Response: The agency provides the following clarification. Regarding expansion, the recommended pause on expansion is not relevant to the proposed rule. Regarding performance requirements and indicators, the agency did not remove performance requirements or the handling of secure assessment material indicators. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF. Regarding page 25, indicator 1a, the 2020 Adult High School Diploma and Industry Certification Public CSPF Academic Standard includes indicator 1a, student achievement on exit-level assessment, which is calculated using the student results on any taken end-of-course exams.

Comment: A member of the State Board of Education (SBOE) commented that the agency should solicit input from the SBOE prior to posting charter school rules and that expansion decisions should be under SBOE rule.

Response: The agency provides the following clarification. The agency reviews and revises the CSPF annually and solicits input from stakeholder groups. Relating to expansion decisions, TEC, §12.101(b-0), requires the commissioner of education to notify the SBOE of any new charters the commissioner proposes to grant, and the SBOE has authority to vote against the grant of any new charter; however, TEC, §12.114(a), states that a revision of an open-enrollment charter school's charter may be made at the approval of the commissioner.

Comment: A representative of Disability Rights of Texas requested the return of indicators for special education.

Response: The agency provides the following clarification. The indicators measuring performance for special education remain in the CSPF. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard, therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

Comments: An individual commented that charter schools have proven they can serve special population students without the indicators in the manual.

Response: The agency provides the following clarification. The indicators measuring performance for special populations remain in the CSPF. The CSPF Manual has been modified at adoption to reflect the continued inclusion of the Operational Framework Indicators 3b, 3c, and 3l with a score of not applicable. TEA received approval from USDE on March 30, 2020, to waive statewide assessment and accountability requirements under ESEA, as amended by ESSA, for the 2019-2020 school year. Consequently, for 2020 state academic accountability, all Texas districts and campuses received a label of Not Rated: Declared State of Disaster. For the 2020 Academic Standard,

therefore, the CSPF will not utilize state academic accountability data; Academic Framework Indicators 1a, 1b, and 1c are marked "not rated: declared state of disaster" for the 2020 CSPF due to the unavailability of data; and Operational Framework Indicators 3b, 3c, and 3l are marked "not applicable" for the 2020 CSPF.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks, and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2020 CSPF report is based on specific criteria, which are described in the *2020 Charter School Performance Framework Manual* provided in this subsection.
Figure: 19 TAC §100.1010(c)

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 February 16, 2022.

TRD-202200563
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 8, 2022
Proposal publication date: September 3, 2021
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.18

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct, without changes, as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7955). The rule will not be republished.

The amendment to §531.18 and the form adopted by reference implement statutory changes enacted by the 87th Legislature in HB 1560, which moved the regulation of residential service companies, also known as home warranty companies, from TREC to the Texas Department of Licensing and Regulation (TDLR) effective September 1, 2021. The amendment to the Consumer Protection Notice removes a reference to home warranty companies being regulated by TREC.

No comments were received on the amendments as published.

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

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 February 18, 2022.

TRD-202200605
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: March 10, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 936-3284

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CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.56

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.56, Consumer Information, in Chapter 535, General Provisions, without changes, as published in the November 26, 2021, issue of the *Texas Register* (46 TexReg 7956). The rule will not be republished.

The amendment to §535.56 and the forms adopted by reference incorporate a new point system that is easier to understand. This simplified point system does not increase the requirements to obtain a broker's license and is intended to further streamline the broker license application process. The amendment and forms adopted by reference also include changes to the requirements by mandating an applicant must have performed at least one transaction per year for at least four of the five years preceding the date the application is filed. They also remove the low point value categories of Exclusive Right to Sell Listings, Buyer and Tenant Representation Agreements, and Listings, but increase the opportunity for agents to count team management

and now delegated supervision by eliminating the previous maximum points that could be counted under that category.

The Commission received four comments related to the changes, all of which were reviewed by the Broker Responsibility Working Group. Two comments generally expressed support for the changes. Another comment expressed concern related to what the commenter viewed as a reduction in requirements related to mandating transactions under (c) take place in at least four of the five proceeding years; however, the adopted change does not change the number of transactions required and is not a reduction in the experience requirements to obtain a broker's license. The final comment received expressed concern related to someone like himself who works in compliance and training and completing one transaction per year in the five years preceding the application date. The rule expands the experience points one can earn when supervising and the transactional requirement under (b)(2)(C) does not limit someone in this position from obtaining the requisite experience because such supervision falls under (c). As a result, the Commission did not make any changes in response to the comments received.

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

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 February 18, 2022.

TRD-202200606
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: March 10, 2022
Proposal publication date: November 26, 2021
For further information, please call: (512) 936-3284

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §703.26 without changes to the proposed amendments as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8173); therefore, the rule will not be republished. The amendments relate to reimbursement of clinical trial participation costs to grantees, a statutory reference to the Cancer Clinical Trial Participation Program, and non-substantive edits.

Reasoned Justification

The amendments to §703.26(f) add parking as a reimbursable clinical trial participation cost, correct the statutory reference of the Cancer Clinical Trial Participation Program to Texas Health and Safety Code Chapter 51, and correct a grammatical error. The amendment to §703.26(e) restructures the subsection without changing the substantive requirements.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §703.26; CPRIT staff recommends moving forward with adoption of the amendments.

CPRIT's Oversight Committee adopted the rule changes under the authority of the Texas Health and Safety Code Annotated § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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 February 18, 2022.

TRD-202200602
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: March 10, 2022
Proposal publication date: December 3, 2021
For further information, please call: (512) 305-8487

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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) adopts amendments to 28 TAC §§102.4, 102.5, and 102.8, relating to claim electronic data interchange (EDI) reporting. The amendments are adopted without changes to the proposed text published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8967) and will not be republished. These amendments 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 adopted in Chapter 124, new Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division.

REASONED JUSTIFICATION. Amendments to §§102.4, 102.5, and 102.8 are necessary to relocate and update current claim EDI reporting requirements to newly adopted Chapter 124, new Subchapter B, and to implement the new claim EDI IAIABC Re-

lease 3.1.4 reporting standard. The amendments are also necessary to clarify and update existing reporting and notification requirements. These rule amendments include 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 Chapter 124, Subchapter B. The amendments also correct typographical, 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 adopted amendments to §102.4(d) add email addresses as a type of required business service insurance carriers and health care providers must provide to receive required communication on workers' compensation claims. This change recognizes email as another mode of communication between injured employees and insurance carriers and health care providers. The adoption also amends "regarding" to "on" to conform language to the agency's current style.

The adopted amendments to §102.4(g) 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 adopted amendment to §102.4(m) removes the reference to "electronic communication." The term is no longer needed since the term "electronic transmission" adequately describes the type of communication.

The adopted amendments to §102.4(n) remove "number of" and add "numbers" to clarify that insurance carriers and health care providers must provide sufficient toll-free telephone numbers, fax numbers, or email addresses. The adopted 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 to receive required communication on workers' compensation claims.

The adopted amendments to §102.4(o) remove "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 adopted language also amends §102.4(o) to add email addresses as a type of required business service..

The adopted language adds new subsection (q), which clarifies that the section is effective on adoption since other portions are effective on the same date 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 adopted amendments to §102.5(a) remove the ability for the injured employee to request 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 adopted amendments to §102.5(c) update 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 adopted amendments to §102.5(d) clarify and update 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 adopted amendments to §102.5(e) 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 adopted amendments to §102.5(e) also delete 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 Chapter 124, Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division.

The adopted amendments to §102.5(e) delete outdated and unnecessary references to claim and medical EDI reporting.

The adopted amendments to §102.5(h) abbreviate "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 before the end of normal business hours on the last permissible day of filing.

The adopted amendments add 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 Chapter 124, Subchapter B. The other subsections are effective on adoption.

Section 102.8 concerns Information Requested on Written Communications to the Division. The adopted amendments to §102.8(a) delete "FEIN" because the abbreviation is not used elsewhere in the section.

The adopted amendments to §102.8(b) update references to Chapter 124, Subchapter B, concerning Insurance Carrier Claim EDI Reporting to the Division, and delete references to mandatory and conditional data elements for claim EDI reporting. The claim EDI reporting requirements are relocated and updated in Chapter 124, Subchapter B. The adopted amendments to §102.8(b) also specify that the subsection refers to claim EDI and update the reference to the amended title of §124.2, concerning Insurance Carrier Notification Requirements.

The adopted amendments add 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 Chapter 124, Subchapter B.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments, and no oral comments. Commenters in support of the proposal were the Office of Injured Employee Counsel and Sentinel Government Affairs. DWC appreciates the supportive comments.

Comment on §102.5(i). One commenter remarked that the proposed effective date of July 23, 2022, does not provide insur-

ance companies, their trading partners and vendors, and DWC with enough time to successfully complete the testing required by §124.108(f) and suggests the effective date be changed to October or November 2023.

Agency Response. DWC disagrees. The implementation date avoids overlap with other jurisdictions' implementation dates for claims EDI release 3.1. No other commenters expressed concern with the proposed implementation date during the comment period for the formal proposal. DWC published two informal proposals of the rule amendments and asked for feedback from stakeholders about the time needed for implementation. Only three stakeholders indicated that they needed more than 15 months to implement the changes.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§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 the powers and duties of DWC under the Labor Code and other laws of this state.

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.

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 February 17, 2022.

TRD-202200577
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: March 9, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 804-4703

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CHAPTER 124. INSURANCE CARRIERS: NOTICES, PAYMENTS, AND REPORTING

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §124.2, concerning insurance carrier reporting and notification requirements, and new Subchapter B in 28 TAC §§124.100 - 124.108, concerning insurance carrier claim electronic data interchange (EDI) reporting to DWC. The amendments and new sections are adopted without changes to the proposed text published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8971). DWC made nonsubstantive clarifying changes to the Event Table and Edit Matrix incorporated by reference in §124.103(b)(2) and (3) in response to public comments. The purpose of the adoption 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 adoption 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. 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.

REASONED JUSTIFICATION. Amending §124.2 is necessary to relocate and update current claim EDI reporting requirements to 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 typographical, 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 na-

tional 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 adopted amendments revise 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 grouped under a new subchapter titled Subchapter A. Insurance Carriers: Required Notices and Modes of Payment. Chapter 124, new Subchapter B titled Subchapter B. Insurance Carrier Claim EDI Reporting to the Division contains claim reporting requirements moved from 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."

Subchapter A, Section 124.2. Section 124.2 concerns Insurance Carrier Reporting and Notification Requirements.

Adopted §124.2 removes "Reporting" from the title.

The adoption removes the text of former §124.2(b) because requirements related to the form, format, and matter of claim EDI transmissions are included in Chapter 124, new Subchapter B.

The adoption relabels the subsections, and adopted §124.2(b) adds a reference to Chapter 124, new Subchapter B and instructs insurance carriers to report according to the requirements of new Subchapter B.

Adopted §124.2(b)(1)(A) clarifies that insurance carriers must file electronically with DWC information about a fatality as described in §124.2(b)(1).

New §124.2(b)(2) 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(b)(1).

Adopted §124.2(b)(3) removes "(Correction)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report corrections electronically.

Adopted §124.2(b)(4) removes "(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 electronically report the compensable death of an injured employee without beneficiaries or payees.

Adopted §124.2(b)(5) removes "(Change)" from the text. The term refers to the maintenance type code description in the claim EDI reporting standard used to report corrections electronically.

Adopted §124.2(c) removes "(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.

Adopted §124.2(d)(1) removes "(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.

New §124.2(d)(2) 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(d)(1). Insurance carriers must 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 adoption removes the text of former §124.2(d)(3), which removes 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. Adopted 124.2(d)(3) 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. This change aligns rule language with the updated methodology for reporting reduced earnings in the claim EDI Release 3.1.4 standard.

Adopted §124.2(d)(3) clarifies 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.

Adopted §124.2(d)(4) - (6) remove "(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.

Adopted §124.2(d)(7) adds a reference to §129.1(1) that specifies the meaning of employer continuation of salary. Section 124.2(d)(7) removes "(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.

Adopted §124.2(d)(7)(A) removes "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. Section 124.2(d)(7)(A) clarifies that salary continuation should be reported when the insurance carrier is not initiating temporary income benefits.

Adopted §124.2(d)(7)(B) changes "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.

New §124.2(d)(7)(C) clarifies that an insurance carrier must electronically notify DWC 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 addition aligns rule language with the updated methodology for reporting salary continuation in the claim EDI Release 3.1.4 standard.

New §124.2(d)(8) specifies 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.

New §124.2(d)(9) specifies 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.

Adopted 124.2(j)(1) adds "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.

Former §124.2(m) was removed because requirements related to transmission of acknowledgements and the correction of errors by the insurance carrier are included in new Subchapter B.

Former §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, were removed. 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.

Adopted §124.2(n)(1) clarifies that §124.2(n)(1)(A) - (F) are claim service administration functions with contact information that must be reported to DWC. Adopted §124.2(n)(1)(F) adds 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 allows 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.

New §124.2(p) clarifies that the section is effective July 26, 2023, to align with the effective date of the claim EDI requirements in adopted Chapter 124, Subchapter B.

Subchapter B, Section 124.100. New §124.100 concerns applicability of the insurance carrier claim EDI reporting and notification requirements. Section 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 new 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 draft 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 commenter 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. New §124.101 concerns the purpose of the insurance carrier claim EDI reporting and notification requirements. Section 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. This 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. New §124.102 concerns definitions associated with the insurance carrier claim EDI reporting and notification requirements. Section 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. New §124.103 concerns IAIABC reporting standards adopted by reference necessary for successful claim EDI reporting and transaction processing. Section 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.

Section 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.

Section 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. Section 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 with migration and match data considerations.

Section 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 a maintenance type code. 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.

Section 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.

Section 124.103(c) provides the location of the adopted tables on DWC's website. Section 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. New §124.104 concerns reporting requirements for insurance carrier claim EDI reporting. Section 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. Section 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. Section 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. New §124.105 concerns records required to be reported through claim EDI. Section 124.105(a) identifies the events that require an insurance carrier to submit a claim EDI record. Section 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. Section 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. Section 124.105(c) provides that claims with a date of injury on or after January 1, 1991, must be reported according to the requirements of Chapter 124, concerning Insurance Carriers: Notices, Payments, and Reporting.

Section 124.106. New §124.106 concerns records excluded from reporting through claim EDI. Section 124.106 identifies the types of records that are not required to be reported under the subchapter. Section 124.106(b) specifically excludes claims that do not meet the requirements of §124.2(b), and this provision mirrors the requirement in §124.105(a)(1). Section 124.106(d) specifically excludes claims with dates of injury before January 1, 1991, and this provision mirrors the requirement in §124.105(d) to report claims with dates of injury on or after that date.

Section 124.107. New §124.107 concerns state specific requirements for claim EDI reporting. Section 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 §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.

Section 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. New §124.108 concerns insurance carrier EDI compliance coordinators and trading partners. Section 124.108(a) provides that insurance carriers may contract with trading partners to submit required claim EDI records to DWC. Section 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. Section 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. Section 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.

Section 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. Section 124.108(e) outlines the requirements related to testing before an insurance carrier or trading partner will be approved for production submissions. Section 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. Section 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.

Section 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. Section 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.

Section 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. Section 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.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received 31 comments from five commenters, with four submitting them in written form and one submitting orally at the public hearing. The commenters were the AFC Urgent Care in Temple, TX, Sentry.com, Office of Injured Employee Counsel, Summit, and Sentinel Government Affairs. All comments were in support of the proposal. DWC appreciates the comments in support of amendments to §124.2 and new Chapter 124, Subchapter B.

Comment on Chapter 124. One commenter recommended building a web portal integrated with EDI filings that automatically generates forms to be sent to the injured employee based on the EDI filings, since several other states use EDI transactions to generate forms directly to the injured employee.

Agency Response to Comment on Chapter 124. DWC disagrees. Workers' compensation system participants must provide forms and notices to injured employees according to requirements of the Labor Code and DWC rules.

Comment on §124.2(d). One commenter remarked that the proposed rule changes are insufficient. They asked DWC to revise the circumstances under which the insurance carrier is required to provide information to the health care provider. The commenter stated when the insurance carrier is disputing compensability of the injury, the health care provider should also be informed by the insurance carrier copying the health care provider on the relevant plain language notices sent to the injured employee and DWC.

Agency Response to Comment on §124.2(d). DWC disagrees. Changes to rule language in §124.2(d) is limited to changes necessary for the implementation of the claim EDI Release 3.1.4 standard. This recommended change is outside the scope of the rule project.

Comment on §124.2(d)(8). One commenter asked whether the requirement to file a PLN-10B, *Notice of Lump Sum Payment of Income or Death Benefits* (PLN-10B) applies when an insurance carrier is paying lump sum death benefits to the Subsequent Injury Fund under 28 TAC §132.10(f). The commenter also asked whether the requirement to file a PLN-10B applies when an insurance carrier pays a lump sum of death benefits to a spouse upon remarriage under DWC 28 TAC §132.16(d)(4).

Agency Response to Comment on §124.2(d)(8). The insurance carrier should not issue the PLN-10B when paying a lump sum death benefit to the Subsequent Injury Fund, since there are no eligible beneficiaries to receive the PLN. DWC made a change to the Texas Claim EDI 3.1.4 Event Table, Version 1.0, TXDWC SROI Event Table tab removing the PLN-10B from the "Paper Forms" column, Row 27 for consistency with this notice requirement. The insurance carrier must report payments of lump sum death benefits to a spouse upon remarriage as required under 28 TAC §124.2(d)(8) and under 28 TAC §124.2(h), which is the plain language notice requirement to the beneficiary (PLN-10B).

Comment on §124.2(d)(5). One commenter remarked that the language in the rule is inconsistent with the corresponding claim EDI event language reinstatement of benefits. The commenter said the language is unclear and may cause confusion and recommends changing rule language to "within 10 days of making the first resumed payment."

Agency Response to Comment on §124.2(d)(5). DWC disagrees. The requirement to report a first payment of income benefits is referenced in §124.2(d)(1), and the requirement to report resumed payments must be read in the context of all reporting requirements in §124.2(d).

Comment on §124.2(m). One commenter remarked the acknowledgement process, timeframe, and service standard was

struck from the rule. They recommend the acknowledgment reporting standard be defined in the rule by reinstating paragraph (m) and specifying the service standards for DWC's acknowledgement EDI processing.

Agency Response to Comment on §124.2(m). DWC disagrees. The previous §124.2(m) did not include the service standards for DWC EDI acknowledgement processing. DWC is not required to promulgate the timeframe for the jurisdiction to return acknowledgements, but DWC and ISO will provide more information about processing schedules and timeframes after rule adoption.

Comment on §124.100(a). One commenter remarked that Chapter 124, Subchapter B requirements are effective on July 26, 2023, and any claim transactions on or after that date must be in the new reporting format. They state that insurance carriers and trading partners will need at least 18 months from the adoption of the rule to fully implement and complete testing. They requested an effective date of October or November 2023. The commenter also recommended accommodating insurance companies and vendors ready to submit claim data using Release 3.1.4 by allowing them to submit claim data using the Release 3.1.4 standard before the effective date of the rule.

Agency Response to Comment on §124.100(a). DWC disagrees. The effective date for claim EDI Release 3.1.4 reporting avoids overlap with other jurisdictions implementing claims EDI Release 3.1 reporting at the same time. No other commenters expressed concern with the proposed implementation date. DWC published two informal proposals of the rule amendments and asked for feedback from stakeholders about the time needed for implementation. Only three stakeholders indicated that they needed more than 15 months to implement the changes. DWC disagrees with concurrent reporting of claims EDI using the claims EDI Release 1.0 and 3.1.4 standards. A single implementation date for claim EDI Release 3.1.4 reporting also avoids overlap with other jurisdictions implementing claims EDI Release 3.1 reporting at the same time. A single implementation date will better facilitate the successful implementation of the reporting standard.

Comment on §124.103(a),(b)(1) - (4), and (c). One commenter was concerned that the Texas claim EDI Release 3.1.4 reporting requirements specifically reference the IAIABC guide by date and version and create an issue where the documents cannot be revised or corrected without rulemaking authority. The commenter also expressed concern that issues arise and corrections may be needed during testing and after implementation that could necessitate revisions to the reporting requirement documents. They recommend either generally referencing the most updated published IAIABC version of claim EDI Release 3.1 requirements and remove language for specific version references with the effective dates or add language to allow DWC and IAIABC to make corrections to EDI documents and additional versions.

Agency Response to Comment on §124.103(a),(b)(1) - (4), and (c). DWC disagrees. The Texas Administrative Procedures Act (APA) requires DWC to allow the public an opportunity to review and comment on changes to agency rules before adoption. Specific dated versions of DWC reporting requirements ensure that no changes will be made to claim EDI reporting requirements without the opportunity for public comment. DWC recognizes that some issues may arise during insurance carrier and trading partner testing. The rule provides an effective date of June 30, 2023, before the effective date for new reporting requirements, for the Texas Claims EDI Release 3.1.4 Edit Matrix to allow for minor corrections and adjustments identified during the insurance carrier and trading partner testing and onboarding process.

Comment on §124.103(a). One commenter stated that the Texas Claim EDI Release 3.1.4 Implementation Guide, Version 1.0 references an invalid version of the IAIABC Release 3.1 guide. Version 3.1.4 is no longer valid as of January 2022 and has been replaced with version 3.1.5. The IAIABC regularly updates the claim EDI Release 3.1 guide and filing requirements, and DWC should not specifically reference version 3.1.4. The commenter also asked DWC to publish the service standard for which DWC and ISO will provide returned acknowledgements on EDI filing.

Agency Response to Comment on §124.103(a). DWC disagrees. The Texas APA requires DWC to allow the public an opportunity to review and comment on changes to agency rules before adoption. Specific dated versions of DWC reporting requirements ensure that no changes will be made to claim EDI reporting requirements without following the Texas APA. The IAIABC will make a copy of the IAIABC Claim EDI Release 3.1.4 Implementation Guide available on request for IAIABC members or purchase by non-members. DWC is not required to promulgate the timeframe for the jurisdiction to return acknowledgements, but DWC and ISO will provide more information about processing schedules and timeframes after rule adoption.

Comment on §124.103(b)(1). One commenter asked several questions about reports for the EDI compliance coordinator mentioned in the Texas Claim EDI Release 3.1.4 Implementation Guide. The commenter asked if the reports would be new for claim EDI Release 3.1 reporting or if they are available now, and if so, how they could get them. The commenter also asked if insurance carriers are required to respond to DWC about the reports, and if so, what the deadline is for responses. The commenter also asked whether they should report defects or issues with claim EDI Release 3.1 reporting to DWC, ISO, or both, and how reports for rejected records, rejected records resubmitted, records accepted with errors, and accepted with errors corrected will be provided by ISO.

Agency Response to Comment on §124.103(b)(1). Insurance carriers are not required to respond to the EDI monitoring reports but must notify DWC of any issues they have in complying with EDI filing requirements. DWC encourages insurance carriers and trading partners to use these reports to monitor claim and medical EDI reporting compliance. DWC and ISO will provide more information about the data submission process, including error and rejection reports, after rule adoption. Monitoring reports are already available for claim EDI Release 1.0 reporting. Authorized parties can request the reports from DWC using DWC Form-029, *Request for Standard Detailed Data Reports.*

Comment on §124.103(b)(2) - (4). One commenter asked DWC to reconsider accepting certain partial denial codes (B, C, D, F, and G) in addition to denial codes A and E when "denying indemnity payments in part" (DN0294). The commenter recommended that DWC require insurance carriers to submit PLN-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits* (PLN-11) to DWC for partial denial codes.

Agency Response to Comment on §124.103(b)(2) - (4). DWC disagrees. The Texas Claim EDI Release 3.1.4 Event Table, Version 1.0, on the TXDWC SROI Event tab requires insurance carriers to report partial denials codes when the insurance carrier

disputes accrued income benefits due to a dispute of disability on a compensable claim. Denial codes B, C, D, F, and G are not included in the listing of valid codes because they do not apply to a whole indemnity denial. Insurance carriers must continue to send PLN-11) when: the insurance carrier does not agree that the work-related injury stops the injured employee from getting or keeping a job that pays what was earned before the injury (existence, duration, or extent of disability); some of the medical conditions were caused by the work-related injury (extent of injury); or the rules for getting death benefits were met.

Comment on §124.103(b)(2) - (4). One commenter asked if reporting the "payment reason code" (DN0222) for "total employee interest" (321) was valid on a "lump sum payment" report (PY) with "lump sum payment/settlement code" (LS/NS) for a "non-specified lump sum payment" (NS) or whether it could also be used for SROI "initial payments" (IP), "acquired payments" (AP), or "reinstatement of benefits" (RB) events.

Agency Response to Comment on §124.103(b)(2) - (4). The Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0 allows reporting of "total employee interest" (321) in the payment segment for any payment event where interest is paid to the injured employee, including, but not limited to, "initial payments" (IP) and "lump sum payments" (PY).

Comment on §124.103(b)(2) - (4). One commenter detailed various claim-specific reporting scenarios about which "lump sum settlement code" (DN0293) is required under certain conditions.

Agency Response to Comment on §124.103(b)(2) - (4). The Texas Claim EDI Release 3.1.4 Event Table Version 1.0 details the reporting triggers for lump sum payments. DWC and ISO will provide guidance to insurance carriers and trading partners about claim-specific reporting scenarios during testing and on an ongoing basis after the effective date of the claim EDI Release 3.1.4 reporting standards.

Comment on §124.103(b)(2) - (4). One commenter asked if "other benefit type" (OBT) for "total interest on a claim" (320) is expected to be reported under "total employee interest" (321) in claim EDI Release 3.1.4 legacy claims since "other benefit type code" (DN0216) for "total interest on a claim" (320) is not accepted in Release 3.1.4.

Agency Response to Comment on §124.103(b)(2) - (4). The Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0 allows "total interest on a claim" (320) or "total employee interest" (321) to be reported with "other benefit type" codes (DN216) on legacy claims. See the "TXDWC Legacy Claim Definition" in the element requirement table.

Comment on §124.103(b)(2) - (4). One commenter requested that DWC update the population restriction edit for "payment reason code" (DN0222) to accommodate when a "lump sum payment" report (PY) is filed for "payment reason code" (DN0222) of "total employee interest" (321) without reporting a "benefit type code" (BTC).

Agency Response to Comment on §124.103(b)(2) - (4). DWC disagrees. The population restriction for "payment reason code" (DN0222) is in the Texas Claim EDI Release 3.1.4 Edit Matrix, Version 1.0, TXDWC Population Restrictions tab. The restriction does not apply to the "other benefit type" (OBT) code as detailed in ISO reference number EM_POP_REST_DN0222_03.

Comment on §124.103(b)(2) - (4). One commenter detailed various claim-specific scenarios that, when reporting "lump sum payments" (PY) reports with "benefit type code" (0xx), require "gross weekly amount" (DN0174) and "net weekly amount" (DN0087) to be populated. The commenter asked if DWC expects to receive the "gross weekly amount" (DN0174) and the "net weekly amount" (DN0087) for these types of payments.

Agency Response to Comment on §124.103(b)(2) - (4). The Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0 requires the "gross weekly amount" (DN0174) and "net weekly amount" (DN0087) to be reported for "lump sum payments" (PY) because it will be an event benefit segment. DWC and ISO will provide guidance to insurance carriers and trading partners about claim-specific reporting scenarios during testing and on an ongoing basis after the effective date of the claim EDI Release 3.1.4 reporting standards.

Comment on §124.103(b)(2) - (4). One commenter inquired that, since payment segments are not required on the SROI update report (UR), can they be reported to help carriers internally determine new payment or EDI events from legacy events?

Agency Response to Comment on §124.103(b)(2) - (4). The Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0 legacy claim definition tab does not require legacy SROI "Update Reports" (UR) to be filed when there is no new payment or event to report after the implementation date. DWC and ISO will provide guidance to insurance carriers and trading partners about claim-specific reporting scenarios during testing and on an ongoing basis after the effective date of the claim EDI Release 3.1.4 reporting standards.

Comment on §124.103(b)(2) - (4). One commenter asked if DWC would allow removal of previously reported "other benefit types" (DN216) without reporting the corresponding "recovery code" (DN0226) using the "voided other benefit check recovery" (890) code.

Agency Response to Comment on §124.103(b)(2) - (4). The Texas Claim EDI Release 3.1.4 Element Requirement Table, Version 1.0 allows insurance carriers to remove previously reported "other benefit types" (DN216) using an SROI change (02) report.

Comment on §124.103(b)(2) - (4). One commenter detailed various claim-specific reporting scenarios on the population restriction edit for "number of payments" (DN0283) and asked how the insurance carrier should correct the "payment reason code" (DN0222) on the most recent EDI payment "maintenance type code" event if the payment reason code and benefit type code were reported incorrectly.

Agency Response to Comment on §124.103(b)(2) - (4). DWC and ISO will provide guidance to insurance carriers and trading partners about claim-specific reporting scenarios during testing and on an ongoing basis after the effective date of the Texas Claim EDI Release 3.1.4 reporting standards.

Comment on §124.103(b)(2) - (4). One commenter asked DWC to clarify whether an insurance carrier is responsible for all applicable changes reported on all claims whether active or inactive in the claim administrator system. Specifically, they asked if an insurance carrier will be responsible for reporting an FROI or SROI "change" (02) report until all benefits are exhausted, including medical benefits.

Agency Response to Comment on §124.103(b)(2) - (4). Texas Claim EDI Release 3.1.4 Event Table, Version 1.0 details the FROI "change" (02) report and the SROI "change" (02) report triggers where an insurance carrier is required to report claim updates. These triggers apply without regard to the date of in-

jury of the claim or status of the claim in the insurance carrier's system.

Comment on §124.103(b)(2) - (4). One commenter remarked that descriptive language on "initial payment" (IP) events on rows 18 and 21 in the Texas Claim EDI Release 3.1.4 Event Table, Version 1.0, TXDWC SROI Event Table tab is missing from the other "initial payment" (IP) events (rows 17, 19, and 20). The commenter asked DWC to update the other "initial payment" (IP) events (rows 17, 19, and 20) with the language "and a previous SROI for any indemnity benefits has not been received."

Agency Response to Comment on §124.103(b)(2) - (4). DWC agrees that the language in the Texas Claim EDI Release 3.1.4 Event Table, Version 1.0 on rows 18 and 21 of the TXDWC SROI Event Table tab may cause confusion. DWC removed the language "and a previous SROI for any indemnity benefits has not been received" from rows 18 and 21 because "initial payment" (IP) always means the first payment of indemnity benefits made by the insurance carrier regardless of the benefit type.

Comment on §124.103(d). One commenter remarked that DWC's claim EDI reporting standards will create industry hardship and increased financial impact to accommodate reporting differences between the claim EDI IAIABC Release 3.1 standard and DWC's adopted version. The commenter recommends amending the rule so DWC will follow the IAIABC issue resolution request (IRR) process in the event of conflict between DWC rules.

Agency Response to Comment on §124.103(d). 28 TAC §124.103(d) states that, 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. Allowing changes to DWC's reporting standard through the IAIABC's IRR process would not provide for DWC to keep its sole authority to change Texas claim EDI reporting requirements in a manner consistent with the Texas APA.

Comment on §124.105(b)(1) and (2). One commenter remarked that the IAIABC's R3.1 acknowledgement code definitions and rules conflict with DWC's use of acknowledgment code "accepted" (TA) or "accepted with error" (TE) if the data contained in the transaction is invalid or incomplete. The commenter recommends amending the rule to require DWC to refuse invalid or incomplete data with a transaction code "rejected" (TR) rather than accepting invalid or incomplete data with transaction code "accepted" (TA).

Agency Response to Comment on §124.105(b)(1) and (2). DWC disagrees. DWC decided to accept claim EDI records with certain errors and requires insurance carriers to correct those reporting errors within 30 days. Accepting transactions with invalid or incomplete data with the "accepted with error" (TE) acknowledgment code allows DWC to receive critical claim data while the insurance carrier corrects other information in the record.

Comment on §124.107(a)(1) - (5) and (b). One commenter recommended that DWC amend the rule to either generally reference the most updated published IAIABC and DWC claim EDI Release 3.1 requirements and remove specific version references with the effective dates, or allow DWC and the IAIABC to make corrections to EDI documents and version requirements. The commenter stated that they are concerned that DWC documents cannot be revised if needed should a testing or production issue arise after the rule is adopted.

Agency Response to Comment on §124.107(a)(1) - (5) and (b). DWC disagrees. The Texas APA requires DWC to allow the public an opportunity to review and comment on changes to agency rules before adoption. Specific dated versions of DWC reporting requirements ensure that no changes will be made to claim EDI reporting requirements without the opportunity for public comment. DWC recognizes that some issues may arise during insurance carrier and trading partner testing. The rule provides an effective date of June 30, 2023, before the effective date for new reporting requirements for the Texas Claims EDI Release 3.1.4 Edit Matrix to allow for minor corrections and adjustments identified during the insurance carrier and trading partner testing and onboarding process.

Comment on §124.108(e). One commenter asked if DWC will require a new EDI trading partner profile to the claim EDI Release 3.1 implementation. The commenter recommended that DWC allow ISO to manage trading partner agreements.

Agency Response to Comment on §124.108(e). 28 TAC §124.108(e) requires the insurance carrier or trading partner to file an EDI trading partner profile at least five working days before sending its first test transaction. DWC will provide more information about the process for submitting trading partner profiles after rule adoption. DWC agrees with the recommendation for ISO to manage trading partner agreements for claim EDI Release 3.1 reporting. No change in rule text is needed.

Comment on §124.108(f). One commenter requested DWC add a provision for new EDI trading partners to participate in the testing process or be allowed to test their ability to report claims data in the claim EDI Release 3.1.4 format when they enter the Texas workers' compensation system. Two commenters also asked several questions about the claim EDI testing and onboarding process, including questions about the testing schedule for insurance carriers and trading partners, the review of test plan information at txdwcedi.info, and whether DWC will be conducting training or webinars on the amended and new EDI rules and the draft forms before the effective date of the rule.

Agency Response to Comment on §124.108(f). DWC disagrees with adding a provision for new EDI trading partners to test when they enter the Texas workers' compensation system. 28 TAC §124.8(f) requires insurance carriers and trading partners to successfully complete claim EDI Release 3.1 testing before transmitting any production claim EDI Release 3.1.4 data to DWC. This applies to existing or new insurance carriers or trading partners entering the Texas workers' compensation system. DWC does not approve trading partners before they submit test data on behalf of an insurance carrier. DWC and ISO will provide more information, training opportunities, testing schedules and plans, and data processing schedules and timeframes after rule adoption.

SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF PAYMENT

28 TAC §124.2

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §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; pre-

scribe 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 the powers and duties of DWC under the Labor Code and other laws of this state.

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.

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 February 17, 2022.

TRD-202200578
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 26, 2023
Proposal publication date: December 24, 2021
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. The commissioner of workers' compensation adopts 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 work-

ers' 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 the powers and duties of DWC under the Labor Code and other laws of this state.

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.

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 February 17, 2022.

TRD-202200579
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 26, 2023
Proposal publication date: December 24, 2021
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4031

The Comptroller of Public Accounts adopts the repeal of existing §9.4031, concerning a manual for discounting oil and gas income, without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5540). The rule will not be republished.

This section related to the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a "discount rate" in the DCF method. The comptroller repeals existing §9.4031 in order to adopt a new §9.4031 with revisions to remove concepts and explanations included in the referenced manual. The repeal of §9.4031 will be effective as of the date the new §9.4031 takes effect.

The comptroller did not receive any comments regarding adoption of the repeal.

The repeal is adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.175 (Oil or Gas Interest), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising oil or gas interests for ad valorem tax purposes.

This repeal implements Tax Code, §23.175 (Oil or Gas 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 February 18, 2022.

TRD-202200585
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: March 10, 2022
Proposal publication date: September 3, 2021
For further information, please call: (512) 475-2220

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34 TAC §9.4031

The Comptroller of Public Accounts adopts new §9.4031, concerning a manual for discounting oil and gas income, without changes to the proposed text as published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5540). The rule will not be republished.

The new §9.4031 updates and revises the Manual for Discounting Oil and Gas Income that was adopted in April 2015. The new manual explains the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a discount rate in the DCF method. The updates and revisions to the manual generally reflect statutory changes, changes in the federal statutory income tax rate, updates to names and sources of information and updates to appendices to reflect current values. The adopted version is available on the Property Tax Assistance Division website.

The comptroller received public comments regarding the proposal from Rodney Kret of Pritchard and Abbott, Inc.

Mr. Kret requested the comptroller change the manual to refer to the mineral interest as the subject property rather than mineral reserves. The comptroller adopts alternative changes to the manual adopted by reference in new §9.4031 to address Mr. Kret's comment.

Mr. Kret also noted that the page footers say "Discontinuing" instead of "Discounting." The comptroller adopts this change to the manual adopted by reference in new §9.4031 to address Mr. Kret's comment.

Mr. Kret commented on an inconsistency with end-of-year verses mid-year discount rate verbiage and formula. The comptroller declines to make a change for this comment. This comment appears to refer to Appendix A, Figure 1, the annual discount factor for years one through seven are mid-year values. The note under the graphic refers to the salvage value which is discounted at the end of year seven and therefore has a different formula.

The new section is adopted under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.175 (Oil or Gas Interests), which provide the comptroller with the authority to develop and distribute to each appraisal office appraisal manuals that specify the methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

The new section implements Tax Code, §23.175 (Oil or Gas Interests).

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 February 18, 2022.

TRD-202200586
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: March 10, 2022
Proposal publication date: September 3, 2021
For further information, please call: (512) 475-2220

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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

Department of Savings and Mortgage Lending

Title 7, Part 4

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending (department) files this notice of its intent to review and consider for re-adoption, re-adoption with amendments, or repeal by the commission the following chapters of 7 TAC Part 4:

Chapter 51, Charter Applications (§§51.1 - 51.15); and

Chapter 52, Department Administration (§§52.10 - 52.13, 52.20, 52.30, 52.100 - 52.104, 52.200 -52.205, 52.300 - 52.306).

The review will be conducted in accordance with Government Code §2001.039. The department, in conducting the rule review, will assess whether the reasons for originally adopting the rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, reflects current policy considerations and procedures of the department, and whether it is in compliance with Government Code Chapter 2001 (Administrative Procedure Act).

Written comments regarding the rule review, and whether the reasons for initially adopting the sections under review continue to exist, should be submitted to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this notice. Any proposed changes to the rules resulting from rule review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for public comment at that time, prior to potential adoption by the commission.

TRD-202200617
Iain A. Berry
Deputy General Counsel
Department of Savings and Mortgage Lending
Filed: February 22, 2022

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Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) files this notice of intention to review Texas Administrative Code, Title 22, Part 23, Chapter 537, Professional Agreements and Standard Contracts, and Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act. This review is undertaken pursuant to Government Code, §2001.039. TREC will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rule review is expected at the TREC meeting in August 2022.

Any questions or comments pertaining to this notice of intention to review should be directed to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or e-mailed to general.counsel@trec.texas.gov within 30 days of publication.

During the review process, TREC may determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Rules Review section of the *Texas Register* without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

Issued in Austin, Texas on February 14, 2022.

TRD-202200607
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Filed: February 18, 2022

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part of the Texas Administrative Code:

Chapter 91, Cancer

Subchapter A, Cancer Registry

§91.1 - Purpose

§91.2 - Definitions

§91.3 - Who Reports, Access to Records

§91.4 - What to Report

§91.5 - When to Report

§91.6 - How to Report

§91.7 - Where to Report

§91.8 - Compliance

§91.9 - Confidentiality and Disclosure

§91.10 - Quality Assurance

§91.11 - Requests for Statistical Cancer Data

§91.12 - Requests and Release of Confidential Cancer Data

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 91, Cancer, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, phone number (512) 221-9021, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1 of the Texas Administrative Code or on the Secretary of State's website at https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=25&pt=1&ch=91&sch=A&rl=Y.

TRD-202200609
Mahan Farman-Farmaian
Rules Coordination Office, Director
Department of State Health Services
Filed: February 18, 2022

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Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Before publishing notice of the review in the *Texas Register,* the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received two informal precomments in response to the advance notice. The OCCC appreciates the thoughtful input provided by stakeholders.

Notice of the review of 7 TAC Chapter 83, Subchapter A was published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8261).

The commission received two official comments in response to that notice. One official comment was from the Texas Consumer Credit Coalition, and the other official comment was from the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending. Both of these official comments deal with whether the commission should amend §83.503 (relating to Administrative Fee). Currently, §83.503 provides a $100 maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E.

In its official comment, the Texas Consumer Credit Coalition (an organization of licensed lenders) argues that §83.503 should be amended to increase the maximum administrative fee. The comment explains that the costs of originating loans, including labor, occupancy, and technology, have increased since the $100 maximum was adopted in 2013. The comment refers to aggregated data that the coalition previously provided to the OCCC as an informal comment. In November 2020, the coalition provided an informal comment to the OCCC with aggregated cost information from five companies, purporting to justify increasing the maximum administrative fee to $200.

In their official comment, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting reforms to protect Texas consumers) argue that §83.503 should not be amended to increase the maximum administrative fee. The comment expresses concerns about increasing the administrative fee to $200, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from $100.

Regarding these official comments, the commission does not believe that the submitted information supports an increase to $200 at this time. The OCCC intends to study this issue further.

As a result of comments from stakeholders and internal review by the OCCC, the commission has determined that certain revisions are appropriate and necessary. These proposed changes are published elsewhere in this issue of the *Texas Register.* The OCCC intends to further study the issue of whether the maximum administrative fee in §83.503 should be amended.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 83, Subchapter A continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202200601
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: February 18, 2022

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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: 7 TAC §33.27(e)(1)

Annual Assessment Fee Schedule for CEX License Holders:

If the total dollar amount of your annual transactions is:		**Then your annual assessment is:**
Over --	**But not over --**	
----------	$249,999.99	$2,750.00
$250,000.00	$499,999.99	$2,750.00 plus the amount of your transactions over $250,000 multiplied by a factor of .00235
$500,000.00	$999,999.99	$3,350.00 plus the amount of your transactions over $500,000 multiplied by a factor of .00175
$1,000,000.00	$9,999,999.99	$4,250.00 plus the amount of your transactions over $1 million multiplied by a factor of .000115
$10,000,000.00	$24,999,999.99	$5,250.00 plus the amount of your transactions over $10 million multiplied by a factor of .0000835
$25,000,000.00	$49,999,999.99	$6,250.00 plus the amount of your transactions over $25 million multiplied by a factor of .0000735
$50,000,000.00	$199,999,999.99	$7,950.00 plus the amount of your transactions over $50 million multiplied by a factor of .00001155
$200,000,000.00	----------	$9,150.00 plus the amount of your transactions over $200 million multiplied by a factor of .00001125, but not more than $21,250.00.

If the calculation result is greater than $21,250, your annual assessment is $21,250.

Figure 7 TAC §33.27(e)(2)

Annual Assessment Fee Schedule for MT License Holders:

If the total dollar amount of your annual transactions is:		**Then your annual assessment is:**
Over --	**But not over --**	
----------	$249,999.99	$3,950.00
$250,000.00	$499,999.99	$3,950.00 plus the amount of your transactions over $250,000 multiplied by a factor of .00235
$500,000.00	$999,999.99	$4,550.00 plus the amount of your transactions over $500,000 multiplied by a factor of .00175
$1,000,000.00	$9,999,999.99	$5,450.00 plus the amount of your transactions over $1 million multiplied by a factor of .000115
$10,000,000.00	$24,999,999.99	$6,450.00 plus the amount of your transactions over $10 million multiplied by a factor of .0000835
$25,000,000.00	$49,999,999.99	$7,700.00 plus the amount of your transactions over $25 million multiplied by a factor of .0000735
$50,000,000.00	$199,999,999.99	$9,450.00 plus the amount of your transactions over $50 million multiplied by a factor of .00001155
$200,000,000.00	----------	$11,100.00 plus the amount of your transactions over $200 million multiplied by a factor of .00001125, but not more than $21,250.00.

If the calculation result is greater than $21,250, your annual assessment is $21,250.

Figure: 28 TAC §21.5502(h)(3)

Example 1

If the Centers for Medicare and Medicaid Services (CMS) published a JSON file for the Medicare plan on January 5, 2020, the required file names would be as follows:

a. "2020-01-05_cms_medicare_in-network-rates.json";

b. "2020-01-05_cms_medicare_allowed-amounts.json"; and

c. "2020-01-05_cms_medicare_prescription-drugs.json."

Example 2

If an issuer named "issuer abc" published a JSON file for a plan named "healthcare 100", on May 1, 2021, the required file names would be as follows:

a. "2021-05-01_issuer-abc_healthcare-100_in-network-rates.json";

b. "2021-05-01_issuer-abc_healthcare-100_allowed-amounts.json"; and

c. "2021-05-01_issuer-abc_healthcare-100_prescription-drugs.json."

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

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas, and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Webb & Webb Construction, LLC d/b/a Eagle Construction;* Cause No. 2017-57031, in the 113th Judicial District, Harris County, Texas.

Nature of the Suit: Defendant Webb & Webb Construction, LLC, engages in construction activities, including land-clearing operations, throughout Harris County, Texas. Harris County initiated suit alleging that between 2015 and 2017, Defendant's unauthorized outdoor burning of tree debris and improper use of air curtain incinerators (ACIs) to burn brush in its land-clearing projects had resulted in ash and other air contaminants going off-site, creating nuisance conditions, in violation of the Texas Clean Air Act and rules promulgated by the Texas Commission on Environmental Quality (TCEQ). The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party.

Proposed Settlement: The proposed Agreed Final Judgment includes injunctive relief that orders Defendant to immediately cease the discharge of ash and other air contaminants from unauthorized outdoor burning and noncompliant ACI use; and implement training and proper operational procedures for ACI use and outdoor burning. The proposed settlement also assesses against Defendant civil penalties in the amount of $30,000 to be equally divided between Harris County and the State; and attorney's fees in the amount of $3,750 each to Harris County and the State; and court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Phillip Ledbetter, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: phillip.ledbetter@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202200630
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 22, 2022

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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. 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: *State of Texas v. Surjit Singh Walia;* Cause No. D-1-GN-20-002584; in the 459th Judicial District Court, Travis County, Texas.

Background: Defendant Surjit Singh Walia is the owner of a former gas station located at 7918 Highway 6, Hitchcock, Galveston County, Texas (the "Site"). The Site has been the subject of an administrative order issued by the Texas Commission on Environmental Quality ("TCEQ") for improper maintenance and operation of underground petroleum storage tanks ("USTs") located beneath its surface. Specifically, Defendant failed to properly register the USTs and improperly removed the USTs from service without conducting a site assessment to determine whether or not a release of any regulated substance had occurred. On May 11, 2020, the State filed suit to enforce the order and State laws regulating USTs, which prompted Defendant to begin complying with the order and perform a site assessment. After reviewing the Defendant's release determination report, the TCEQ determined that a release of regulated substance had occurred at the Site. Defendant continues to work with TCEQ to remediate the Site and ensure that the Site is properly closed in accordance with State law and TCEQ rules.

Proposed Settlement: The Agreed Final Judgment and Permanent Injunction orders Defendant to continue remediating the Site in accordance with State law and TCEQ rules and provides for an award to the State of $13,000 in civil penalties and $5,000 in attorney's fees.

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 Logan Harrell, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Logan.Harrell@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202200628
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 22, 2022

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Texas Water Code Settlement Notice

The State of Texas ("State") gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water 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: *State of Texas v. Liberty Materials, Inc.;* Cause No. D-1-GN-20-006780 in the 201st Judicial District Court, Travis County, Texas.

Background: Defendant Liberty Materials, Inc. ("Liberty") owns and operates a surface sand mining operation at 19515 Moorhead Road, Conroe, Montgomery County, Texas (the "Facility"). Liberty registered the Facility with the Texas Commission on Environmental Quality ("TCEQ") as an active aggregate production operation that primarily produces industrial sand. The Facility contains an active mining area, processing plant, multiple process and settling ponds for wastewater, and multiple stormwater ponds. The State filed suit against Liberty for the unauthorized discharge of wastewater into the West Fork of the San Jacinto River due to a breach of a berm surrounding a process pond in November 2019, in violation of the Texas Water Code and the rules promulgated by the TCEQ.

Proposed Settlement: Without an admission of fault or liability by Liberty to any of the alleged violations of any statute, regulation, or rule as described in the State's Original Petition, the parties propose an Agreed Final Judgment which provides for an award to the State of $30,000 in civil penalties and $5,000 in attorney's fees.

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 Logan Harrell, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Logan.Harrell@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202200629
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: February 22, 2022

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State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed Rule Changes Texas Disciplinary Rules of Professional Conduct Rules 1.00 Terminology, 1.09 Conflict of Interest: Former Client, 1.10 Conflict of Interest: General Rule, 3.09 Special Responsibilities of a Prosecutor

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 4, 2022, issue of the Texas Register.)

TRD-202200611
Andrea Low
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: February 22, 2022

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - January 2022

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period January 2022 is $53.54 per barrel for the three-month period beginning on October 1, 2021, and ending December 31, 2021. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of January 2022, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period January 2022 is $3.50 per mcf for the three-month period beginning on October 1, 2021, and ending December 31, 2021. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2022, from a qualified low-producing well, is eligible for a 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2022 is $82.98 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of January 2022, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of January 2022 is $4.26 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2022, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202200645
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: February 22, 2022

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Concho Valley Workforce Development Board

Request for Qualifications/Quotations: Request for Proposal (RFP) Evaluators

DATE: February 22, 2022

SUBMIT QUOTES TO: Executive Director Yolanda Sanchez

ysanchez@cvworkforce.org

36 East Twohig Ste 805

San Angelo, Texas 76903

(325) 703-2451

Responses must be submitted in writing via mail, in person, or email.

SUBMISSION DATE: Responses must be received in our office by 5:00 p.m. on March 29, 2022. Responses received after the deadline above will not be considered. Timely delivery is the sole responsibility of the proposer.

The Concho Valley Workforce Development Board is soliciting qualifications and quotations from independent evaluators to review and score proposals received by the Board for Workforce and Child Care Services to include Workforce Innovation and Opportunity Act, Temporary Assistance for Needy Families-CHOICES, Supplemental Nutrition Assistance Program, Business Services, Reemployment Services, Trade Adjustment Assistance, and Child Care Services. The intent of the RFP is to select one sub-recipient to manage and operate the Workforce Center and programs with a contract beginning October 1, 2022.

Website to obtain Bid package: https://cvworkforce.org/bids.aspx?bidID=14

TRD-202200627
Yolanda Sanchez
Executive Director
Concho Valley Workforce Development Board
Filed: February 22, 2022

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/28/22 - 03/06/22 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 02/28/22 - 03/06/22 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/22 - 03/31/22 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/22 - 03/31/22 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202200648
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 22, 2022

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Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2021 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA Part B). The Texas Education Agency (TEA) is inviting public comment on its Proposed State Application under IDEA Part B. The annual grant application provides assurances that the state's policies and procedures in effect are consistent with the federal requirements to ensure that a free appropriate public education is made available to all children with a disability from 3 to 21 years of age, including children who have been suspended or expelled from school. 34 Code of Federal Regulations §300.165 requires that states conduct public hearings, ensure adequate notice of those hearings, and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures.

Availability of the State Application. The Proposed State Application is available on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=2147493812. Instructions for submitting public comments are available from the same site. The Proposed State Application will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application at the William B. Travis location should contact the TEA Department of Special Education Programs at (512) 463-9414.

Procedures for Submitting Written Comments. TEA will accept written comments pertaining to the Proposed State Application by mail to TEA, Department of Special Education Programs, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to spedrule@tea.texas.gov.

Participation in Public Hearings. TEA will provide individuals with opportunities to testify on the Proposed State Application and the state's policies and procedures for implementing IDEA Part B, on April 7, 2022, and April 8, 2022, between 8:30 a.m. and 11:30 a.m. remotely via Zoom Meeting at the following links: April 7 https://us02web.zoom.us/j/84889911259; April 8 https://us02web.zoom.us/j/85087130943. The public may attend one or both hearings. Sign-in will begin at 8:30 a.m. and close at 9:00 a.m. for each hearing. Anyone wishing to testify at one of the hearings must sign in between 8:30 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will begin at 9:00 a.m. and continue until those who have signed in have been given the opportunity to comment. Each individual's comments are limited to three minutes, and each individual may comment only once. Both hearings will be recorded and made available publicly. Parties interested in testifying are encouraged to also include written testimony. Public hearing information is available on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=2147493812.

Timetable for Submitting the State Application. After review and consideration of all public comments, TEA will make necessary or appropriate modifications and will submit the State Application to the U.S. Department of Education on or before May 20, 2022.

For more information, contact the TEA Department of Special Education Programs by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at spedrule@tea.texas.gov.

Issued in Austin, Texas, on February 23, 2022.

TRD-202200652
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 23, 2022

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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 **April 4, 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 April 4, 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: City of Littlefield; DOCKET NUMBER: 2021-0672-PWS-E; IDENTIFIER: RN101258994; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; PENALTY: $8,118; ENFORCEMENT COORDINATOR: Julianne Matthews, (817) 588-5861; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Copano Processing LLC; DOCKET NUMBER: 2021-0865-AIR-E; IDENTIFIER: RN101271419; LOCATION: Sheridan, Colorado County; TYPE OF FACILITY: oil and gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 56613, PSDTX706, and PSDTX709M1, Special Conditions Number 1, Federal Operating Permit Number O807, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $25,000; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: David Lee Sheffield dba Texas Landing Utilities; DOCKET NUMBER: 2021-0811-PWS-E; IDENTIFIER: RN101210037; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 5 picoCuries per liter for combined radium-226 and -228 based on the running annual average; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the executive director (ED) for optimal corrosion control treatment within six months after the end of the January 1, 2020 - June 30, 2020, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2020 - June 30, 2020, monitoring period during which the lead action level was exceeded; PENALTY: $2,825; ENFORCEMENT COORDINATOR: Julianne Matthews, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: FARMERS TRANSPORT, INCORPORATED; DOCKET NUMBER: 2021-0907-PWS-E; IDENTIFIER: RN101458610; LOCATION: Port Alto, Calhoun County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; and 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: Georgia-Pacific Wood Products LLC; DOCKET NUMBER: 2021-0981-AIR-E; IDENTIFIER: RN100217744; LOCATION: Pineland, Sabine County; TYPE OF FACILITY: wood manufacturing; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 1037 and PSDTX924M2, Special Conditions Number 7, Federal Operating Permit (FOP) Number O2407, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent an excess opacity event; and 30 TAC §101.201(e) and §122.143(4), FOP Number O2407, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification no later than 24 hours after the discovery of an excess opacity event; PENALTY: $6,975; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,790; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: HOCHHEIM PRAIRIE HERMANN SONS HALL ASSOCIATION; DOCKET NUMBER: 2021-1010-PWS-E; IDENTIFIER: RN105777411; LOCATION: Yoakum, DeWitt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide continuous and effective disinfection that can be secured under all conditions; 30 TAC §290.42(g), by failing to obtain an exception, in accordance with 30 TAC §290.39(l), prior to using innovative/alternate treatment processes; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well

meter at least once every three years; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: $2,426; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: NEW MUBIN, LLC dba Star Stop 6; DOCKET NUMBER: 2021-0829-PST-E; IDENTIFIER: RN101728624; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (B), and (2) and TWC, §26.3475(c)(1) and (b), by failing to monitor the underground storage tanks (USTs) installed prior to January 1st, 2009, for releases at a frequency of at least once every 30 days, and failing to monitor the USTs and the associated piping installed on or after January 1st, 2009, in a manner which will detect releases at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Patton Springs Independent School District; DOCKET NUMBER: 2021-0292-PWS-E; IDENTIFIER: RN101229169; LOCATION: Afton, Dickens County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 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: $2,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,600; ENFORCEMENT COORDINATOR: Julianne Matthews, (817) 588-5861; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(9) COMPANY: Texas Health and Human Services Commission; DOCKET NUMBER: 2020-0249-MWD-E; IDENTIFIER: RN101523595; LOCATION: Vernon, Wilbarger 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 WQ0010651001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $26,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: ZIO INVESTMENTS, LLC; DOCKET NUMBER: 2021-0511-MLM-E; IDENTIFIER: RN101874683; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements covering land within 150 feet of the facility's well; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away from the wellhead at not less than 0.25 inches per foot; 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to protect the facility's well units, each water treatment plant and all appurtenances, potable water storage tanks, and pressure maintenance facilities with an intruder-resistant fence with a lockable gate or enclose the well units in a locked and ventilated well house with lockable gates; 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers and pumps in a secure enclosure to protect them from adverse weather conditions and vandalism; 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at any residence or establishment where an actual or potential contamination hazard exists in the form of a pressure vacuum breaker or a backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC §290.45(d)(2)(B)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum ground storage capacity which is equal to 50% of the maximum daily demand (MDD); 30 TAC §290.45(d)(2)(B)(iii) and THSC, §341.0315(c), by failing to provide at least one service pump with a capacity of three times the MDD; 30 TAC §290.45(d)(2)(B)(v) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank and the associated pressurized piping in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed or pressurized piping installed or replaced, on or after January 1st, 2009; PENALTY: $16,920; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202200619
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 22, 2022

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Enforcement Orders

An agreed order was adopted regarding Alfredo Galvan, Docket No. 2020-1407-AIR-E on February 22, 2022 assessing $1,250 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.

TRD-202200646
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 22, 2022

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Enforcement Orders

A default order was adopted regarding Thirsty Parrot, LLC, Docket No. 2019-0200-PWS-E on February 23, 2022, assessing $820 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YGRIEGA ENVIRONMENTAL SERVICES, LLC, Docket No. 2019-1579-MSW-E on February 23, 2022, assessing $20,039 in administrative penalties. Information

concerning any aspect of this order may be obtained by contacting Clayton Smith, 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 MAUKA WATER, LTD., Docket No. 2020-0700-PWS-E on February 23, 2022, assessing $937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Judith Bohr, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Liberty Hill, Docket No. 2021-0162-MWD-E on February 23, 2022, assessing $26,250 in administrative penalties with $5,250 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2021-0219-AIR-E on February 23, 2022, assessing $19,092 in administrative penalties with $3,818 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 Veolia ES Technical Solutions, L.L.C, Docket No. 2021-0233-AIR-E on February 23, 2022, assessing $8,550 in administrative penalties with $1,710 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 RAJU SHORT STOP INC, Docket No. 2021-0271-PST-E on February 23, 2022, assessing $9,000 in administrative penalties with $1,800 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 Tahoka, Docket No. 2021-0329-PWS-E on February 23, 2022, assessing $5,200 in administrative penalties with $4,000 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 Miller Family Services, Inc., Docket No. 2021-0367-AIR-E on February 23, 2022, assessing $8,752 in administrative penalties with $1,750 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 ASPK PROPERTIES LLC dba Big Z Food Mart, Docket No. 2021-0453-PST-E on February 23, 2022, assessing $40,999 in administrative penalties with $8,199 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, 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 Justin, Docket No. 2021-0567-MWD-E on February 23, 2022, assessing $17,187 in administrative penalties with $3,437 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.

TRD-202200653
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 23, 2022

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Notice of Hearing on Rhino Ready Mix, LLC: SOAH Docket No. 582-22-1468; TCEQ Docket No. 2021-1465-AIR; Registration No. 162413

APPLICATION.

Rhino Ready Mix, LLC, 6638 Madden Lane, Houston, Texas 77048-2203, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 162413, which would authorize construction of a permanent concrete batch plant located at 9230 Winfield Road, Houston, Harris County, Texas 77050. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.255555%2C29.898888&level=12. For the exact location, refer to the application. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on August 18, 2020.

The TCEQ Executive Director has determined that the application meets all of the requirements of a standard permit authorized by 30 Texas Administrative Code (TAC) §116.611, which would establish the conditions under which the plant must operate. The Executive Director has made a preliminary decision to issue the registration because it meets all applicable rules. The application, executive director's preliminary decision, and standard permit are available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the High Meadows Branch Library, 4500 Aldine Mail Route, Houston, Harris County, Texas. If the public viewing place is closed the application may be viewed at the following weblink: https://www.aarcenv.com/Shares/Rhino-Ready-Mix-Air-Permit-Application-and-Submissions.pdf. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - April 4, 2022

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/

Meeting ID: 161 700 0468

Password: Prelim22

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 700 0468

Password: 74676404

Visit the SOAH website for registration at: http://www.soah.texas.gov/

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on December 21, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, 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. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Rhino Ready Mix, LLC at the address stated above or by calling Mr. Akash Kansal, Environmental Specialist, AARC Environmental, Inc. at (713) 974-2272.

Issued: February 16, 2022

TRD-202200573
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 16, 2022

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Notice of Opportunity to Comment on a Default 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 Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 4, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 4, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Linda Mosbacker; DOCKET NUMBER: 2020-1350-MLM-E; TCEQ ID NUMBER: RN109492223; LOCATION: 410 Our Road, Shepherd, San Jacinto County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §111.201, and TCEQ Agreed Order Docket Number 2018-0478-MLM-E, Ordering Provision Number 2.a.i., by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; and 30 TAC §330.15(a) and (c) and TCEQ Agreed Order Docket Number 2018-0478-MLM-E, Ordering Provision Number 2.b.i., by causing, suffering, allowing, or permitting the collection, storage, processing, or disposal of MSW; PENALTY: $118,705; STAFF ATTORNEY: John S. Merculief II, Lit-

igation, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202200644
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 22, 2022

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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 **April 4, 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 an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 4, 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: NDJASSI Group LLC dba Minny Mart; DOCKET NUMBER: 2021-0484-PST-E; TCEQ ID NUMBER: RN102283660; LOCATION: 1620 Independence Parkway, Plano, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and 30 TAC §334.7(d)(1)(A) and (d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: $7,500; STAFF ATTORNEY: Judy Bohr, Litigation, MC 175, (512) 239-5807; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202200625
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 22, 2022

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015944001

APPLICATION. Bayou Side Partners Santa Fe, Ltd., 2000 West Parkwood Avenue, Friendswood, Texas 77546, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015944001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day.

The facility will be located at 13920 Country Side Street, Santa Fe, in Galveston County, Texas 77517. The treated effluent will be discharged to constructed pond 1, thence to constructed pond 2, thence to a ditch, thence to an unnamed tributary, thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for constructed ponds 1 and 2 and the ditch, and high aquatic life use for the unnamed tributary. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Unnamed tributary and Dickinson Bayou Tidal, which have been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.123888%2C29.420555&level=12.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment

Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, April 4, 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 129-619-747. 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, (213) 929-4212 and enter access code 460-335-252. Additional information will be available on the agency calendar of events at the following link:

https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Dickinson Public Library, 4411 State Highway 3, Dickinson, Texas. Further information may also be obtained from Bayou Side Partners Santa Fe, Ltd. at the address stated above or by calling Mr. Paul Tilly, E.I.T., Project Engineer, Ward, Getz & Associates, at (713) 234-6093.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 23, 2022

TRD-202200649
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 23, 2022

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Notice of Water Rights Application

Notice Issued February 22, 2022

APPLICATION NO. 14-1025C; Ingram Concrete, LLC (Owner/Applicant), P.O. Box 1166, Brownwood, Texas 76804, seeks to sever its water rights (320 acre-feet of water per year), authorized by Certificate of Adjudication No. 14-1026 and combine those rights with the 309 acre-feet of water per year, authorized by Certificate of Adjudication No. 14-1025. The Applicant further seeks to amend the combined Certificate of Adjudication No. 14-1025 to replace the existing authorized diversion points with a new diversion point on the Colorado River, Colorado River Basin for mining purposes in Coke County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 18, 2020. Additional information and fees were received on August 7, 12, and 14, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 8, 2020.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, installation of a measurement device at the new diversion point, and reasonable measures to avoid impingement and entrainment. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by March 11, 2022. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by March 11, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by March 11, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 1025 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at http://www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202200620
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 22, 2022

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 14, 2022 to February 17, 2022. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, February 25, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, March 27, 2022.

FEDERAL AGENCY ACTIONS:

Applicant: Callan Marine, LTD

Location: The project site is located in Galveston Bay, directly adjacent to 6800 Harborside Drive, in Galveston, Galveston County, Texas 77554.

Latitude & Longitude (NAD 83): 29.297758, -94.851603

Project Description: The applicant proposes to discharge approximately 112 cubic yards of fill material below mean high water (MHW) into approximately 0.037 acre (1,296-square-foot) of open water associated with the construction and installation of eleven 48-inch-diameter guide piles, seven 48-inch-diameter breasting piles, nine 36-inch-diameter breasting piles, the construction of an approximate 130-foot by 16-foot concrete boat ramp that would require the discharge of approximately 82 cubic yards of fill material below the existing MHW line within an approximate 1,056-square-foot area, and the construction of an approximate 88-foot by 16-foot concrete boat ramp that would require the discharge of approximately 30 cubic yards of fill material below the existing MHW line within an approximate 240-square-foot area.

Type of Application: U.S. Army Corps of Engineers permit application # SWG- 2022-00023. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 22-1179-F1

Applicant: Union Pacific Railroad

Location: The project site is located within multiple bodies of water (9 wetlands) along a two-mile stretch of Joe Fulton corridor within the existing mainline track on Union Pacific Railroad Corpus Christi Subdivision located in Corpus Christi, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.839641, -97.518893

Project Description: The applicant proposes the placement of a total of 9,595 cubic yards (CY) of fill material (road grade) within 5.92-acres of jurisdictional wetlands during the construction of multiple tracts along an existing rail line and the expansion of a 0.04-acre area rail line tract. The applicant proposes two (2) bridges as support for the new lines as a 110-foot timber Stringer Trestle open deck (TST-OD) and a 110-foot Prestressed Concrete Box (PCB).

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00071. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1183-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at *pialegal@glo.texas.gov.* Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at *federal.consistency@glo.texas.gov.*

TRD-202200624
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Filed: February 22, 2022

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Texas Health and Human Services Commission

Public Notice: Statewide Transition Plan for Medicaid Home and Community Based Services Settings

The Texas Health and Human Services Commission (HHSC) announces its intent to submit a Statewide Transition Plan (STP) to the Centers for Medicare & Medicaid Services (CMS) for approval, as required in Title 42 Code of Federal Regulations, Sections 441.301(c)(6) and 441.710(a)(3). The STP describes HHSC's planned activities to achieve full and ongoing compliance with the federal Home and Community Based Services (HCBS) settings regulations. The STP is expected to be submitted to CMS in April 2022.

In March 2014, CMS issued federal regulations that added requirements for settings where Medicaid HCBS are provided. The regulations require that a Medicaid HCBS setting be selected by the person receiving Medicaid HCBS. Medicaid HCBS settings must also be integrated in and support the person's full access to the community. CMS has given states until March 17, 2023, to bring Medicaid HCBS settings into compliance with the regulations.

CMS requires states to submit an STP describing their planned initiatives and activities to achieve compliance with the federal HCBS settings regulations. The STP must include:

- An assessment of settings where Medicaid HCBS are provided;

- Remediation strategies for settings that do not meet the requirements of the regulations;

- A summary of public and stakeholder input on the assessment processes and remediation strategies; and

- A summary of public comments received on the transition plan and any revisions made to the plan in response to public comment.

HHSC has amended the version of the STP previously submitted to CMS based on public comments and guidance from CMS. The amended STP can be found at: https://www.hhs.texas.gov/services/health/medicaid-chip/medicaid-chip-programs-services/home-community-based-services.

Copy of STP. Interested parties may obtain a free copy of the STP by contacting Rachel Neely, Program Specialist, by U.S. mail, telephone, fax, or by email at the addresses below.

Written Comments. Written comments must be submitted by April 4, 2022. Written comments, requests to review comments, or both 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: Rachel Neely, Office of Policy

John H. Winters Complex

701 W 51st Street

Mail Code H-600

Austin, Texas 78751

Overnight mail, special delivery mail, or hand delivery:

Texas Health and Human Services Commission

Attention: Rachel Neely, Office of Policy

John H. Winters Complex

701 W 51st Street

Mail Code H-600

Austin, Texas 78751

Phone number for package delivery: (512) 438-4297

Fax Attention: Rachel Neely, Office of Policy at (512) 438-4297

Email: Medicaid_HCBS_Rule@hhsc.state.tx.us

TRD-202200647
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 22, 2022

♦ ♦ ♦

Public Notice - Texas State Plan for Medical Assistance Amendment (updated Public Notice of Intent)

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2022.

The original Public Notice of Intent (PNI) was published in the December 10, 2021, issue of the *Texas Register.*

The proposed amendment to the Texas State Plan will correspond with a proposed amendment to 1 Texas Administrative Code §355.8101. The purpose of the proposed amendment to §355.8101 is to comply with House Bill 4 (H.B. 4), 87th Legislature, Regular Session 2021 and to make other amendments to enhance clarity, consistency, and specificity. HHSC is required by H.B. 4 to ensure a rural health clinic (RHC) is reimbursed for a covered telemedicine or telehealth medical service delivered by a health care provider to a Medicaid recipient at a RHC facility.

The proposed amendment is estimated to result in no foreseeable implications relating to costs or revenues.

Rule Hearing. A rule hearing was conducted in person and online on January 24, 2022, at 2:00 p.m. Information about the proposed rule changes was published in the January 14, 2022, issue of the *Texas Register.*

Copy of Proposed Amendment. Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Holly Freed, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or 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 HHSC, formerly the local offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendment 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: Provider Finance Department

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: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFD_Hospitals@hhsc.state.tx.us

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this state plan amendment.

TRD-202200575
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 17, 2022

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2393 "BIG CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2393 is "BIG CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2393 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2393.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, $10.00, $20.00, $30.00, $50.00, $100, $400, $1,000, $10,000 and $200,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2393 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$400	FRHN
$1,000	ONTH
$10,000	10TH
$200,000	200TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2393), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2393-0000001-001.

H. Pack - A Pack of the "BIG CASH" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BIG CASH" Scratch Ticket Game No. 2393.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BIG CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-four (64) Play Symbols. FAST WIN Play Instructions: If a player reveals 2 matching prize amounts in the same FAST WIN area, the player wins that amount. KEY NUMBER MATCH Play Instructions: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-four (64) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-four (64) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-four (64) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-four (64) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. FAST WIN: A non-winning Prize Symbol in a FAST WIN play area will never match a winning Prize Symbol in another FAST WIN play area.

D. FAST WIN: A Ticket may have up to two (2) matching non-winning Prize Symbols across the four (4) FAST WIN play areas.

E. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

F. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

I. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

J. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

K. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG CASH" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100 or $400, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100 or $400 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG CASH" Scratch Ticket Game prize of $1,000, $10,000 or $200,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BIG CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BIG CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2393. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2393 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	1,320,000	9.09
$20.00	900,000	13.33
$30.00	360,000	33.33
$50.00	240,000	50.00
$100	240,000	50.00
$400	10,800	1,111.11
$1,000	100	120,000.00
$10,000	8	1,500,000.00
$200,000	5	2,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.91. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2393 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2393, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202200651
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 23, 2022

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North Central Texas Council of Governments

Request for Information - Dynamic Traffic Assignment Software Exploration

The North Central Texas Council of Governments (NCTCOG) is requesting information from suppliers on developing a regional Dynamic Traffic Assignment model in the NCTCOG area. Dynamic Traffic Assignment (DTA) represents a more realistic and accurate assignment method superior to the existing time-of-day static assignment. DTA captures the interaction between travelers' route choices, traffic congestion, and time-dependent travel time in a temporally coherent manner. Specifically, DTA models aim to describe such time-varying network and demand interaction using a behaviorally sound approach. NCTCOG is investigating if any off-the-shelf software for regional DTA is available, or the existing academic/consultant developed software could be adopted for customization in the NCTCOG region.

Information must be received no later than 5:00 p.m., Central Time, on Friday, April 1, 2022, to Hong Zheng, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Information will be available at www.nctcog.org/rfp by the close of business on Friday, March 4, 2022.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202200650
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 23, 2022

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Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 3, 2022, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of Central Texas Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 53183.

Central Texas requests a high-cost support adjustment increase of $1,009,432. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the previous 12 months, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53183.

TRD-202200618
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2022

♦ ♦ ♦

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 47 (2022) is cited as follows: 47 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 "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 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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