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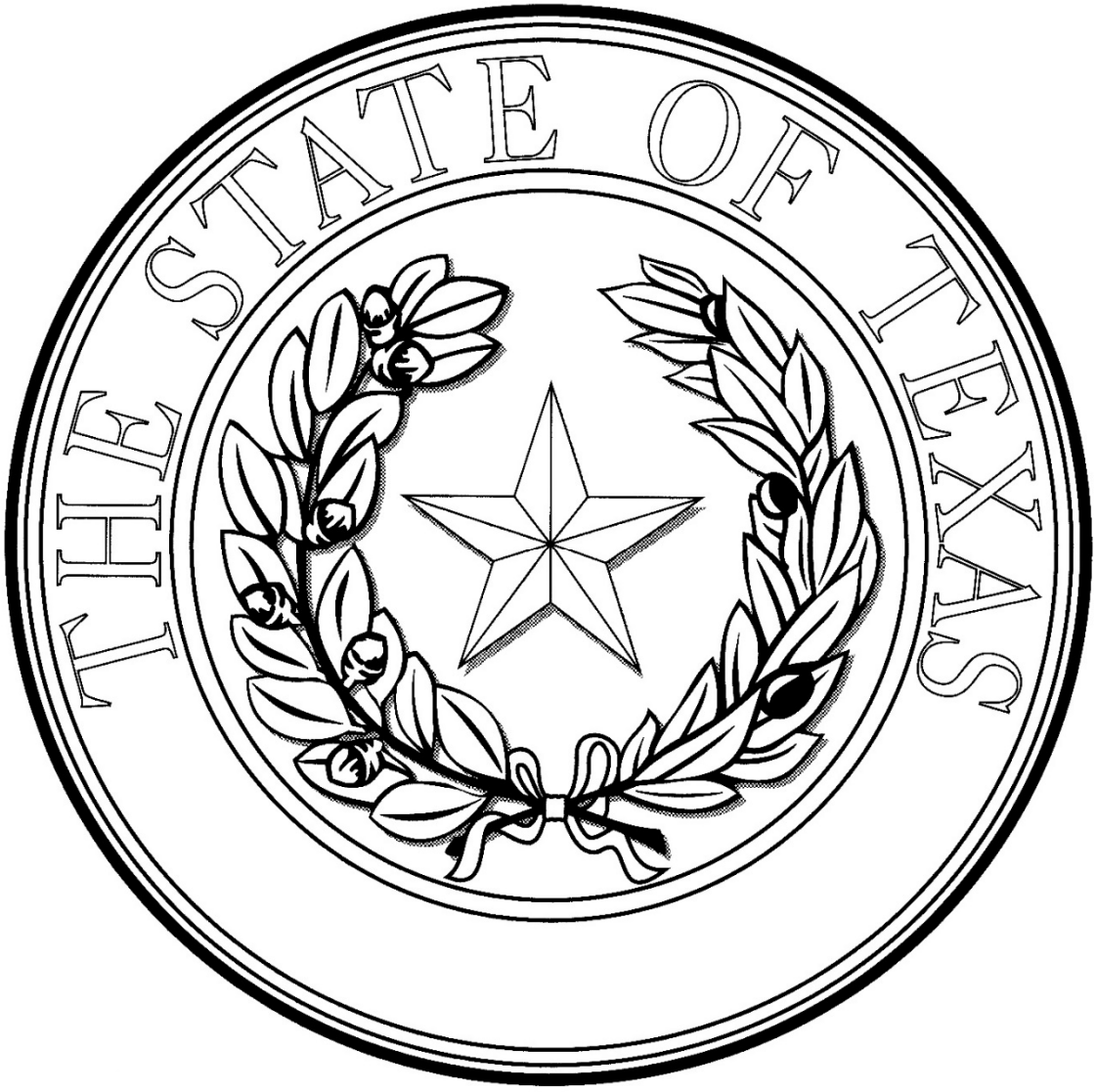

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

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

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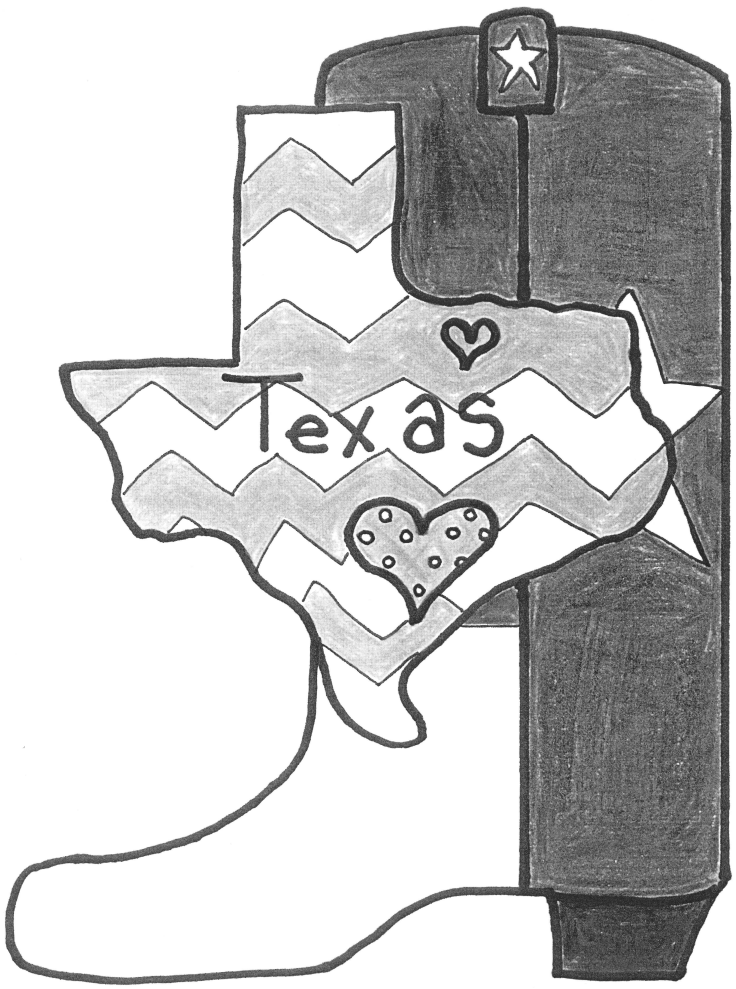
In This Issue


Texas

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.

Proclamation 41-3906

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of Texas, do hereby certify that the shooting that occurred on May 24, 2022, at Robb Elementary School in the City of Uvalde has caused widespread and severe damage, injury, and loss of life in Uvalde County, Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Uvalde County.

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

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

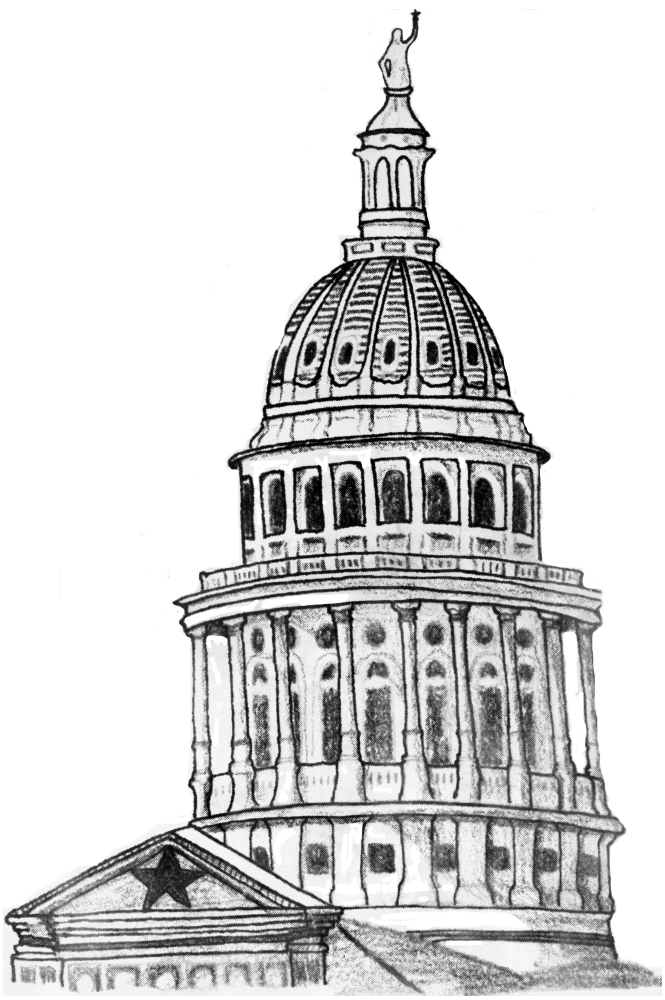
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of May, 2022.

Greg Abbott, Governor

TRD-202202099

♦ ♦ ♦



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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 3. MEDICAID HOME HEALTH SERVICES

1 TAC §§354.1031, 354.1035, 354.1037, 354.1039, 354.1040, 354.1043

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1031, concerning General; §354.1035, concerning Recipient Qualifications for Home Health Services; §354.1037, concerning Written Plan of Care; §354.1039, Home Health Services Benefits and Limitations; §354.1040, concerning Requirements for Wheeled Mobility Systems; and §354.1043, concerning Competitive Procurement of Durable Medical Equipment (DME) and Supplies.

BACKGROUND AND PURPOSE

The purpose of the proposal is in response to recent federal legislation that prompted the Centers for Medicare & Medicaid Services (CMS) to issue interim final rule, CMS-5531-IFC (Interim Final Rule with Comment), to expand the healthcare workforce during the COVID-19 pandemic. CMS-5531-IFC is a permanent federal regulation that is not subject to the COVID-19 Public Health Emergency and became effective on May 8, 2020, with a retroactive application date of March 1, 2020.

To align the Medicaid home health services rules with CMS-5531-IFC, this proposal changes the requirement that a plan of care for covered Medicaid home health services can only be recommended, signed, and dated by a recipient's physician and allows a physician assistant (PA) or an advanced practice registered nurse who is licensed as a certified nurse practitioner (CNP) or clinical nurse specialist (CNS) to order home health services as described in the proposed rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1031 adds definitions of "allowed practitioner," "durable medical equipment (DME)," "HHSC," and "supplies". The proposed amendment revises the definitions of "home health aide," "home health agency," "home health services," and "plan of care." The proposed amendment deletes the definitions of "Department," "Medicare fee schedule," "expendable medical supply acquisition fee," and "expendable medical supplies."

The proposed amendment to §354.1035 adds "allowed practitioner" to allow a PA, CNP, or CNS to order home health services.

The proposed amendment to §354.1037 adds "allowed practitioner" to allow a PA, CNP, or CNS to order home health services.

The proposed amendment to §354.1039 revises the title of the section to "Benefits and Limitations of Home Health Services" and adds "allowed practitioner" to allow a PA, CNP, or CNS to order home health services. The proposed amendment reorganizes the section for readability and updates terminology to align with new definitions in §354.1031. The proposed amendment also adds a legally authorized representative and a court appointed guardian to the list of persons who have been or could be taught to administer injections to a recipient in subsection (b)(3)(D). The proposed amendment includes minor editorial changes that improve clarity.

The proposed amendment to §354.1040 adds "allowed practitioner" in subsection (e)(1). The proposed amendment updates references to state law, and includes minor editorial changes.

The proposed amendment to §354.1043 adds "allowed practitioner" in paragraph (1)(B). The proposed amendment replaces "department" with "HHSC" and includes minor editorial changes.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

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

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

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses or micro-businesses because there is no requirement to alter current business practices. No rural communities contract as providers of Medicaid home health services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the rules will enhance access to Medicaid home health services by allowing a PA, CNP, or CNS to order home health services for eligible recipients. The proposed rules will also decrease the administrative burden and demands of direct care services provided by physicians.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules do not require a change in business practices nor do they impose additional fees or costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R023" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendments affect recent federal legislation implemented during the COVID-19 pandemic that prompted the Centers for Medicare & Medicaid Services (CMS) to issue interim final rule, CMS-5531-IFC, to expand the healthcare workforce during the COVID-19 Pandemic. CMS-5531-IFC is a permanent federal regulation that is not subject to the COVID-19 Public Health Emergency and became effective on May 8, 2020 with a retroactive application date of March 1, 2020.

§354.1031. General.

(a) Purpose. The purpose of this division [~~subchapter~~] is to establish rules for the Title XIX (Medicaid) home health services benefit [~~benefits~~].

(b) Definitions. The following words and terms when used in this division [~~subchapter,~~] [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Allowed practitioner--An individual:

(A) that maintains a valid and registered prescriptive authority agreement in accordance with Texas Occupations Code, Chapter 157, Subchapter B; and

(B) is licensed as:

(i) a physician assistant under Texas Occupations Code, Chapter 204; or

(ii) an advanced practice registered nurse licensed by the Texas Board of Nursing as a:

(I) certified nurse practitioner; or

(II) clinical nurse specialist.

(2) Durable medical equipment (DME)--Equipment and appliances that are primarily and customarily used to serve a medical purpose, generally are not useful to an individual in the absence of a disability, illness or injury, can withstand repeated use, and can be reusable or removable.

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

(4) Home health aide--An individual who meets the Medicare home health agency personnel qualifications and training requirements established for home health aides in 42 CFR §484.80.

(5) Home health aide services--Services which can be provided by a qualified home health aide, including those listed in 42 CFR §484.80.

(6) Home health agency--A public or private agency or organization, licensed by the State of Texas to provide home health services and qualified to participate as a Medicare home health agency under 42 CFR, Part 484, Subparts A - C (relating to Home Health Services).

(7) [~~(1)~~] Home health services--Covered services, DME [~~equipment, appliances~~] and supplies which are provided to a quali-

fied Medicaid recipient [recipients] at the recipient's [their] place of residence by home health agency staff or[,] providers of DME and [durable medical equipment, or expendable medical] supplies under [federal regulations] 42 CFR §440.70 and §354.1037 of this division [title] (relating to Written Plan of Care) and §354.1039 of this division [title] (relating to Benefits and Limitations of Home Health Services [Benefits and Limitations]).

(8) Intermittent--Home health aide or skilled nursing services provided less than on a daily basis, less than eight hours per day.

(9) Part-time--Home health aide or skilled nursing services provided any number of days per week, less than eight hours per day.

[(2) Home health agency--A public or private agency or organization, licensed by the state to provide home health services and qualified to participate as a Medicare home health agency under 42 CFR, Part 484, §§484.1-484.52 (Conditions for Participation of Home Health Agencies).]

(10) [(3)] Plan of care--A written regimen established and periodically reviewed by a physician or an allowed practitioner in consultation with home health agency staff, which meets the plan of care standards at 42 CFR §484.60 [§484.18] and §354.1037 of this division [title].

(11) Supplies--Health care related items that are required to address an individual's medical disability, illness, or injury and are:

(A) consumable or disposable; or

(B) cannot withstand repeated use by more than one individual.

[(4) Home health aide--An individual who meets the Medicare home health agency personnel qualifications and training requirements established for home health aides at 42 CFR §484.4 and §484.36.]

[(5) Home health aide services--Services which can be provided by a qualified home health aide, including those listed at 42 CFR §484.36.]

[(6) Department--The Texas Department of Health and or its designee.]

[(7) Part-time--Home health aide or skilled nursing services provided any number of days per week less than eight hours per day.]

[(8) Intermittent--Home health aide or skilled nursing services provided less than on a daily basis less than eight hours per day.]

[(9) Medicare fee schedule--The fee schedule established by the Medicare program for expendable medical supplies and durable medical equipment.]

[(10) Expendable medical supply acquisition fee--The fee determined by the department or its designee by periodic sampling of suppliers or from information provided in manufacturer's publications, whichever is lesser.]

[(11) Expendable medical supplies--Medical supplies which meet one or both of the following criteria:]

[(A) the typical term of use is within one year of purchase; or]

[(B) reimbursement is made at a cost of $1,000 or less.]

[(12) Durable medical equipment--Machinery and/or equipment which meets one or both of the following criteria:]

[(A) the projected term of use is more than one year; or]

[(B) reimbursement is made at a cost more than $1,000.]

§354.1035. Recipient Qualifications for Home Health Services.

(a) An eligible Medicaid recipient must meet the following requirements to qualify for Medicaid home health services.[:]

(1) An eligible recipient must be under the continuing care and medical supervision of a physician or an allowed practitioner who has established a plan of care or submitted a request form for the recipient in accordance with §354.1037 or §354.1039 of this division [title] (relating to Written Plan of Care and Benefits and Limitations of Home Health Services [Benefits and Limitations]). A recipient [Recipients] must be seen by the recipient's [their] physician or allowed practitioner within 30 days prior to the start of home health services. This [physician] visit may be waived when a diagnosis has already been established by the physician or allowed practitioner and the recipient is under the continuing care and medical supervision of the physician or allowed practitioner. Any waiver must be based on the physician's or allowed practitioner's statement that an additional evaluation visit is not medically necessary.[;]

(2) An eligible recipient must have a medical need for covered home health services as documented in the recipient's plan of care or request form for the recipient in accordance with §354.1037 or §354.1039 of this division. [(of this title (relating to Written Plan of Care and Home Health Services Benefits and Limitations); and]

(3) An eligible recipient must receive services that meet the recipient's existing medical needs, subject to §354.1039 of this division[, of this title (relating to Home Health Services Benefits and Limitations)] and that can be safely provided in the recipient's home.

(b) The home health service, supply, or item of durable medical equipment[, or appliance] must:

(1) be prior authorized by HHSC [the department], unless otherwise specified by HHSC [the department];

(2) be prescribed by a physician or an allowed practitioner who is currently licensed;

(3) be medically necessary, as documented in the plan of care or [and/or] the request form for the recipient[,] in accordance with §354.1037 and §354.1039 of this division [(of this title (relating to Written Plan of Care and Home Health Services Benefits and Limitations)];

(4) be provided to a recipient in the recipient's [their] place of residence; and

(5) meet accepted industry standards for safety where applicable.

§354.1037. Written Plan of Care.

(a) A plan of care must be recommended, signed and dated by the recipient's [attending] physician or allowed practitioner.

(b) The plan of care must contain the following information:

(1) all pertinent diagnoses;

(2) mental status;

(3) types of services, including amount, duration and frequency;

(4) equipment required;

(5) prognosis;

(6) rehabilitation potential;

(7) functional limitations;

(8) activities permitted;

(9) nutritional requirements;

(10) medications;

(11) treatments, including amount and frequency;

(12) safety measures to protect against injury;

(13) instructions for timely discharge or referral; and

(14) date the recipient was last seen by the physician or allowed practitioner.

(c) Orders [~~Physician orders~~] for therapy services must include:

(1) the specific procedures and modalities to be used;

(2) the amount, frequency, and duration; and

(3) the therapist who participated in developing the plan of care.

(d) The plan of care must be reviewed by the physician or allowed practitioner and the home health agency personnel as often as the severity of the recipient's [~~patient's~~] condition requires or at least once every 60 days.

(e) Verbal [~~Oral physician~~] orders may only be given to persons authorized to receive them under state and federal law. They must be reduced to writing, signed and dated by the registered nurse or qualified therapist responsible for furnishing or supervising the ordered service, and placed in the recipient's chart.

(f) The plan of care must [~~shall~~] be initiated by a [~~the~~] registered nurse.

§354.1039. Benefits and Limitations of Home Health Services [~~Benefits and Limitations~~].

(a) HHSC [~~The Health and Human Services Commission or its designee (HHSC)~~] determines authorization requirements and limitations for covered home health services [~~service benefits~~]. The home health agency is responsible for obtaining prior authorization where specified for the home health [~~healthcare~~] service, supply, or item of durable medical equipment (DME)[~~, or appliance~~]. Home health services [~~service benefits~~] include the following:

(1) Skilled nursing. Nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) licensed by the Texas Board of Nursing provided on a part-time or intermittent basis and furnished through an enrolled home health agency are covered home health services [~~benefits~~]. Billable nursing visits may [~~also~~] include:

(A) nursing visits required to teach the recipient, the primary caregiver, a family member, or a [~~and/or~~] neighbor how to administer or assist in a service or activity that is necessary to the care and [~~and/or~~] treatment of the recipient in a home setting; and

(B) RN visits for skilled nursing observation, assessment, and evaluation, provided:

(i) a physician or an allowed practitioner specifically requests that an RN visits [~~a nurse visit~~] the recipient for this purpose; and[~~.~~]

(ii) the request reflects the need for the assessment visit.

~~*[(i)* The physician's request must reflect the need for the assessment visit.]~~

~~*[(ii)* Nursing visits for the primary purpose of assessing a recipient's care needs to develop a plan of care are considered administrative and are not billable; and]~~

~~[(C) RN visits for general supervision of nursing care provided by a home health aide and/or others over whom the RN is administratively or professionally responsible.]~~

(2) Home health aide services. Home health aide services to provide personal care under the supervision of an RN, a licensed physical therapist (PT), or a licensed [~~an~~] occupational therapist (OT) employed by the home health agency are covered home health services [~~benefits~~].

(A) The primary purpose of a home health aide visit must be to provide personal care services.

(B) Duties of a home health aide include:

(i) the performance of simple procedures such as personal care, ambulation, exercise, range of motion, safe transfer, positioning, and household services essential to health care at home;

(ii) assistance with medications that are ordinarily self-administered;

(iii) reporting changes in the recipient's [~~patient's~~] condition and needs; and

(iv) completing appropriate records.

(C) Written instructions for home health aide services must be prepared by an RN, a PT, or an OT, [~~or therapist~~] as appropriate.

(D) The requirements for home health aide supervision are as follows.

(i) When only home health aide services are being furnished to a recipient, an RN must make a supervisory visit to the recipient's residence at least once every 60 days. These supervisory visits must occur when the aide is furnishing patient care.

(ii) When skilled nursing care, PT, or OT are also being furnished to a recipient, an RN must make a supervisory visit to the recipient's residence at least every two weeks.

(iii) When only PT or OT is furnished in addition to the home health aide services, the appropriate skilled therapist may make the supervisory visits in place of an RN.

(E) Visits made primarily for performing housekeeping services are not covered services.

(3) Supplies [~~Medical supplies~~]. Supplies [~~Medical supplies~~] are a covered home health services benefit [~~benefits~~] if they meet the following criteria.

(A) Supplies [~~Medical supplies~~] must be:

(i) documented in the recipient's plan of care as medically necessary and used for medical or therapeutic purposes;

(ii) supplied:

(I) through an enrolled home health agency in compliance with the recipient's plan of care; or

(II) by an enrolled medical supplier under written, signed, and dated physician's or allowed practitioner's prescription; and

(iii) prior authorized unless otherwise specified by HHSC.

(B) Items which are not listed in subparagraph (C) of this paragraph may be medically necessary for the treatment or therapy of a qualified recipient [~~recipients~~]. If a prior authorization request is received for these items, consideration will be given to the request. Approval for reasonable amounts of the requested items may be given if circumstances justify the exception and the need is documented.

(C) Covered items include:

(i) colostomy and ileostomy care supplies;

(ii) urinary catheters, appliances and related supplies;

(iii) pressure pads including elbow and heel protectors;

(iv) incontinent supplies to include incontinent pads or diapers for a recipient [~~clients~~] over the age of four for medical necessity as determined by the physician or allowed practitioner;

(v) crutch and cane tips;

(vi) irrigation sets;

(vii) supports and abdominal binders (not to include braces, orthotics, or prosthetics);

(viii) medicine chest supplies not requiring a prescription (not to include vitamins or personal care items such as soap or shampoos);

(ix) syringes, needles, IV tubing, or [~~and/or~~] IV administration setups, including IV solutions generally used for hydration or prescriptive additives;

(x) dressing supplies;

(xi) thermometers;

(xii) suction catheters;

(xiii) oxygen and related respiratory care supplies; or

(xiv) feeding related supplies.

(4) DME [~~Durable medical equipment (DME)~~]. DME [~~Durable Medical Equipment~~] must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) DME must:

(i) be medically necessary and the appropriateness of the medical [~~health care service, supply,~~] equipment[~~,~~] or appliance prescribed by the physician or allowed practitioner for the treatment of the individual recipient [~~and delivered~~] in the recipient's [~~his~~] place of residence must be documented in:

(I) the plan of care; or [~~and/or~~]

(II) the request form described in subsection (b)(2) of this section;

(ii) be prior authorized unless otherwise specified by HHSC;

(iii) meet the recipient's existing medical and treatment needs;

(iv) be considered safe for use in the home; and

(v) be provided through an:

(I) enrolled home health agency under a current physician's or allowed practitioner's plan of care; or

(II) enrolled DME supplier under a written, signed, and dated physician's or allowed practitioner's prescription.

(B) HHSC will determine whether DME will be rented, purchased, or repaired based upon the duration and use needs of the recipient.

(i) Periodic rental payments are made only for the lesser of:

(I) the period of time the equipment is medically necessary; or

(II) when the total monthly rental payments equal the reasonable purchase cost for the equipment.

(ii) Purchase is justified when the estimated duration of need multiplied by the rental payments would exceed the reasonable purchase cost of the equipment or it is otherwise more practical to purchase the equipment.

(iii) Repair of DME [~~durable medical equipment and appliances~~] will be considered based on the age of the item and the cost to repair the item.

(I) A request for repair of DME [~~durable medical equipment or appliances~~] must include an itemized estimated cost list of the repairs. Rental equipment may be provided to replace purchased DME [~~medical equipment or appliances~~] for the period of time it will take to make necessary repairs to purchased DME [~~medical equipment or appliances~~].

(II) Repairs will not be authorized in situations where the equipment has been abused or neglected by the recipient or the recipient's legally authorized representative (LAR), court appointed guardian, [~~patient, patient's~~] family, or caregiver.

(III) Routine maintenance of rental equipment is the responsibility of the provider.

(C) Covered DME that may be rented, purchased, or repaired includes [~~medical appliances and equipment (rental, purchase, or repairs) include~~]:

(i) non-customized manual or powered wheelchairs, including medically justified seating, supports, and equipment;

~~(I)~~ ~~non-customized including medically justified seating, supports, and equipment; or~~]

(ii) [~~(II)~~] customized manual or power wheelchairs, specifically tailored or individualized, powered wheelchairs, including appropriate medically justified seating, supports, and equipment not to exceed an amount specified by HHSC;[~~.~~]

(iii) [~~(ii)~~] canes, crutches, walkers, and trapeze bars;

(iv) [~~(iii)~~] bed pans, urinals, bedside commode chairs, elevated commode seats, and bath chairs/benches/seats;

(v) [~~(iv)~~] electric and non-electric hospital beds and mattresses;

(vi) [~~(v)~~] air flotation or air pressure mattresses and cushions;

(vii) [~~(vi)~~] bed side rails and bed trays;

(viii) [~~(vii)~~] reasonable and appropriate appliances for measuring blood pressure and blood glucose suitable to the recipient's medical situation to include replacement parts and supplies;

(ix) [~~(viii)~~] lifts for assisting recipient to ambulate within residence;

(x) [~~(ix)~~] pumps for feeding tubes and IV administration; and

(xi) [~~(x)~~] respiratory or oxygen related equipment.

(D) DME [~~Medical equipment or appliances~~] not listed in subparagraph (C) of this paragraph may, in exceptional circumstances, be considered for payment when it can be medically substantiated as a part of the treatment plan that such service would serve a specific medical purpose on an individual case basis.

(5) Physical therapy. To be payable as a home health benefit, physical therapy services must:

(A) be provided by a physical therapist who is currently licensed by the Texas Board of Physical Therapy Examiners, or physical therapist assistant who is licensed by the Texas Board of Physical Therapy Examiners who assists and is supervised by a licensed physical therapist;

(B) be for the treatment of an acute musculoskeletal or neuromuscular condition or an acute exacerbation of a chronic musculoskeletal or neuromuscular condition;

(C) be expected to improve the recipient's [~~patient's~~] condition in a reasonable and generally predictable period of time, based on the physician's or allowed practitioner's assessment of the recipient's [~~patient's~~] restorative potential after any needed consultation with the physical therapist; and

(D) not be provided when the recipient [~~patient~~] has reached the maximum level of improvement. Repetitive services designed to maintain function once the maximum level of improvement has been reached are not a benefit. Services related to activities for the general good and welfare of a recipient [~~patients~~] such as general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation are not reimbursable.

(6) Occupational therapy. To be payable as a home health benefit, occupational therapy services must be:

(A) provided by an occupational therapist [~~one~~] who is currently [~~registered and~~] licensed by the Texas Board of Occupational Therapy Examiners or by an occupational therapist assistant who is licensed by the Texas Board of Occupational Therapy Examiners to assist in the practice of occupational therapy and is supervised by an occupational therapist;

(B) for the evaluation and function-oriented treatment of a recipient [~~individuals~~] whose ability to function in life roles is impaired by recent or current physical illness, injury, or condition; and

(C) specific goal-directed [~~goal directed~~] activities to achieve a functional level of mobility and communication and to prevent further dysfunction within a reasonable length of time based on the occupational therapist's evaluation and the physician's or allowed practitioner's assessment and plan of care.

(7) Insulin syringes and needles. Insulin syringes and needles must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) Pharmacies enrolled in the Medicaid Vendor Drug Program may dispense insulin syringes and needles to an eligible Medicaid recipient [~~recipients~~] with a physician's or an allowed practitioner's prescription.

(B) Prior authorization is not required for an eligible recipient to obtain insulin syringes and needles.

(C) Insulin syringes and needles obtained in accordance with this section will be reimbursed through the Medicaid Vendor Drug Program.

(D) A physician's or an allowed practitioner's plan of care is not required for an eligible recipient to obtain insulin syringes and needles under this section.

(8) Diabetic supplies and related testing equipment. Diabetic supplies and related testing equipment must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) Diabetic supplies and related testing equipment must be prescribed by a physician or an allowed practitioner.

(B) Prior authorization is required unless otherwise specified by HHSC.

(b) Home health service limitations include the following.

(1) Recipient [~~Patient~~] supervision.

(A) A recipient [~~Patients~~] must be seen by the recipient's [~~their~~] physician or allowed practitioner, [~~if consistent with subparagraph (C) of this paragraph, a nurse practitioner, clinical nurse specialist, or physician assistant,~~] within 30 days prior to the start of home health services. This requirement [~~physician visit~~] may be waived when a diagnosis has already been established by the [~~attending~~] physician or allowed practitioner and the recipient [~~patient~~] is currently undergoing active medical care and treatment. Such a waiver is based on the physician's or allowed practitioner's statement that an additional evaluation visit is not medically necessary.

(B) A recipient [~~Patients~~] receiving home health care services must remain under the care and supervision of a physician or an allowed practitioner who reviews and revises the plan of care at least every 60 days or more frequently as the physician or allowed practitioner determines necessary.

~~[(C) If the face-to-face encounter is performed by a nurse practitioner, clinical nurse specialist, or physician assistant, the practitioner must communicate the clinical findings of that encounter to the ordering physician, and the physician ordering the services must:]~~

~~*[(i)* record the date of the face-to-face encounter and the practitioner who conducted the encounter;]~~

~~*[(ii)* affirm that the face-to-face encounter is related to the primary reason the patient requires home health services and that the encounter occurred within 30 days prior to the start of home health services; and]~~

~~*[(iii)* include the clinical findings of the encounter in the patient's medical record.]~~

(2) Time limited prior authorizations.

(A) Prior authorizations for payment of home health services may be issued by HHSC for a service period not to exceed 60 days on any given authorization. Specific authorizations may be limited to a time period less than the established maximum. When the need for home health services exceeds 60 days, or when there is a change in the service plan, the provider must obtain prior approval and retain the physician's or allowed practitioner's signed and dated orders with the revised plan of care.

(B) The provider must [~~shall~~] be notified by HHSC in writing of the authorization or denial [~~(or denial)~~] of requested services.

(C) Prior authorization requests for covered Medicaid home health services must include the following information:

(i) the [~~The~~] Medicaid identification form with the following information about the recipient:

(I) full name, age, and address;

(II) Medical Assistance Program Identification number;

(III) health insurance claim number (where applicable); and

(IV) Medicare number;

(ii) the physician's or allowed practitioner's written, signed, and dated plan of care (submitted by the provider if requested);

(iii) the clinical record data (completed and submitted by the provider if requested);

(iv) a description of the home or living environment;

(v) a composition of the family/caregiver;

(vi) observations pertinent to the overall plan of care in the home; and

(vii) the type of service the recipient [~~patient~~] is receiving from other community or state agencies.

(D) If inadequate or incomplete information is provided, the provider will be requested to furnish additional documentation as required by HHSC to make a decision on the request.

(3) Medication administration. Nursing visits for the purpose of administering medications are not covered if:

(A) the medication is not considered medically necessary to the treatment of the recipient's [~~individual's~~] illness;

(B) the administration of medication exceeds the therapeutic frequency or duration by accepted standards of medical practice;

(C) there is not a medical reason prohibiting the administration of the medication by mouth; or

(D) the recipient [~~patient~~], a primary caregiver, a family member, a legally authorized representative (LAR), a court appointed guardian, or [~~and/or~~] a neighbor of the recipient has been taught or can be taught to administer intramuscular (IM) and intravenous (IV) injections.

(4) Prior approval. Services or supplies furnished without prior approval, unless otherwise specified by HHSC, are not covered home health services [~~benefits~~].

(5) Recipient residence. Services, equipment, or supplies furnished to a recipient who is a resident or patient in a hospital, skilled nursing facility, or intermediate care facility are not covered home health services [~~benefits~~].

(6) Non-billable services. Skilled nursing services that are considered administrative and are not billable include:

(A) nursing visits for the primary purpose of assessing a recipient's care needs to develop a plan of care; and

(B) RN visits for general supervision of nursing care provided by a home health aide or others over whom the RN is professionally responsible.

(c) Home health services are subject to utilization review, which includes the following:

(1) the physician or allowed practitioner is responsible for retaining in the recipient's [~~client's~~] record a copy of the plan of care or [~~and/or~~] a copy of the request form documenting the medical necessity of the home health care service, supply, or item of DME [~~equipment, or appliance~~] and how it meets the recipient's health care needs;

(2) the home health services provider is responsible for documenting the amount, duration, and scope of services in the recipient's plan of care, the DME and supply [~~equipment/supply~~] order request form, and the recipient's [~~client~~] record based on the physician's or allowed practitioner's orders[~~. This information is subject to retrospective review~~]; and

(3) HHSC may conduct retrospective [~~establish~~] random, and targeted reviews [~~utilization review processes~~] to ensure the appropriate utilization of home health services [~~benefits~~] and to monitor the cost effectiveness of home health services.

§354.1040. Requirements for Wheeled Mobility Systems.

(a) Purpose. This section details the requirements for receiving reimbursement for the provision of, or the performance of a major modification to, a wheeled mobility system. This section implements Texas Human Resources Code §32.0425 [~~§32.0424 of the Human Resources Code~~].

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

(1) Occupational therapist (OT)--A person licensed by the Texas Board of Occupational Therapy Examiners to practice occupational therapy, as defined in Texas Occupations Code §454.002(4)[~~, of the Texas Occupations Code~~] (relating to Definitions).

(2) Physical therapist (PT)--A person licensed by the Texas Board of Physical Therapy Examiners to practice physical therapy, as defined in §354.1121 of this subchapter [~~chapter~~] (relating to Definitions).

(3) Qualified rehabilitation professional (QRP)--A person who holds one or more of the following certifications:

(A) [~~Holds~~] a certification as an assistive technology professional or a rehabilitation engineering technologist issued by, and in good standing with, the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA);

(B) [~~Holds~~] a certification as a seating and mobility specialist issued by, and in good standing with, RESNA; or [~~and/or~~]

(C) [~~Holds~~] a certification as a certified rehabilitation technology supplier issued by, and in good standing with, the National Registry of Rehabilitation Technology Suppliers (NRRTS).

(4) Wheeled Mobility System--An item of durable medical equipment (DME) that is a customized powered or manual mobility device or a feature or component of the device, including [~~the following~~]:

(A) seated [~~Seated~~] positioning components;

(B) powered [~~Powered~~] or manual seating options;

(C) specialty [~~Specialty~~] driving controls;

(D) multiple [~~Multiple~~] adjustment frame;

(E) nonstandard [~~Nonstandard~~] performance options; and

(F) other [~~Other~~] complex or specialized components.

(c) Roles and responsibilities. The following persons, when referenced in this section, shall have the following roles in the provision

of, or the performance of a major modification to, a wheeled mobility system, unless the context clearly indicates otherwise.

(1) [~~Occupational therapist (OT)--~~]The OT [~~occupational therapist~~] is responsible for completing the clinical assessment of a recipient required for obtaining a wheeled mobility system. The assessment must [~~shall~~] include detailed documentation of medical need for specific mobility or seating equipment and all necessary accessories.

(2) [~~Physical therapist (PT)--~~]The PT [~~physical therapist~~] is responsible for completing the clinical assessment of a recipient required for obtaining a wheeled mobility system. The assessment must [~~shall~~] include detailed documentation of medical need for specific mobility or seating equipment and all necessary accessories.

(3) [~~Qualified rehabilitation professional (QRP)--~~]The QRP is required to:

(A) be [~~Be~~] present for and involved in the clinical assessment of the recipient;

(B) be [~~Be~~] present at the time of delivery of the wheeled mobility system to direct the fitting of the wheeled mobility system to ensure that the system is appropriate for the recipient; and

(C) verify [~~Verify~~] that the wheeled mobility system functions correctly relative to the recipient.

(4) A person that is licensed as an OT or [~~and/or~~] a PT, and is also certified as a QRP, may perform either the role of the therapist or the QRP during the clinical assessment of the recipient [~~client~~], but cannot serve in both roles at the same time.

(d) Benefit. Wheeled mobility systems are a covered home health services [~~Medicaid~~] benefit when the following criteria are met.

(1) All the requirements for DME, as detailed in §354.1039 of this division [~~chapter~~] (relating to Benefits and Limitations of Home Health Services [~~Benefits and Limitations~~]) are met.

(2) The wheeled [~~Wheeled~~] mobility system is [~~systems are~~] provided by an enrolled DME supplier that directly employs or contracts with a QRP.

(3) An enrolled DME supplier obtains prior authorization for a wheeled mobility system [~~systems~~] from HHSC [~~the Texas Health and Human Services Commission (HHSC) or its designee~~].

(e) Prior authorization requirements. The following documentation must be submitted in a manner approved by HHSC [~~or its designee~~] to obtain prior authorization for a wheeled mobility system.

(1) A signed and dated physician's or allowed practitioner's prescription, or other such documentation as directed by HHSC, that details a wheeled mobility system, including all necessary components[~~, needed by~~] the recipient needs.[~~;~~]

(2) A clinical assessment that includes detailed documentation of medical need for specific mobility or seating equipment and all necessary accessories, signed and dated by an OT or PT authorized to perform the assessment.[~~;~~]

(3) Documentation in a form or manner directed by HHSC [~~or its designee~~] attesting that a QRP was present for and involved in the clinical assessment of the recipient.[~~; and~~]

(4) Any other documentation deemed necessary by HHSC [~~or its designee~~] to adequately explain the medical necessity of the requested equipment.

(f) Requirements for reimbursement. Reimbursement for the provision of, or the performance of a major modification to, a wheeled mobility system will be considered only when:

(1) the [~~The~~] system is delivered to a recipient by a Medicaid-enrolled DME provider that directly employs or contracts with, a QRP, and the QRP was present and involved in the clinical assessment of the recipient for the requested wheeled mobility system; and

(2) at [~~At~~] the time the wheeled mobility system is delivered to the recipient, the QRP is present and responsible for:

(A) directing the fitting to ensure that the system is appropriate for the recipient; and

(B) verifying that the system functions correctly relative to the recipient.

(g) Documentation requirements for reimbursement. The following documentation must be submitted by the enrolled DME supplier with the claim for consideration of reimbursement for a wheeled mobility system in a manner approved by HHSC [~~or its designee~~].

(1) A signed and dated HHSC DME Certification and Receipt Form as required in §354.1185 of this subchapter [~~chapter~~] (relating to Provider Compliance with Durable Medical Equipment (DME) Certification Requirements).[~~; and~~]

(2) Documentation in a form and manner as directed by HHSC [~~or its designee~~] attesting that a QRP was present at the time of delivery and:

(A) directed the fitting of the wheeled mobility system to ensure that the system was appropriate for the recipient; and

(B) verified that the wheeled mobility system functions correctly relative to the recipient.

(h) Effective dates for services provided. The provisions of this section apply to the following services:

(1) wheeled [~~Wheeled~~] mobility systems delivered on or after September 1, 2011;

(2) a [~~A~~] major modification to a wheeled mobility system provided on or after September 1, 2011; and

(3) QRP functions, including participating in a clinical assessment of a recipient [~~client~~] and directing the fitting of a wheeled mobility system, related to the provision of, or a major modification to, a wheeled mobility system when:

(A) the wheeled mobility system is delivered on or after September 1, 2011; and

(B) the QRP functions are performed after the effective date of the associated rates as determined by HHSC.

§354.1043. Competitive Procurement of Durable Medical Equipment (DME) and Supplies.

HHSC [~~The Texas Department of Health (department)~~] may establish a process for procuring DME and supplies that encourages competition and results in savings to HHSC [~~the department~~].

(1) The categories or individual types of DME and supplies that HHSC [~~which the department~~] may procure through a competitive process will be determined by HHSC [~~the department~~] using the following criteria:

(A) the DME or supplies are used by a recipient [~~recipients~~] in sufficient quantities to encourage the competitive process and be cost effective for HHSC [~~the department~~];

(B) the DME or supplies can be timely, safely, and effectively dispensed or provided by a prime vendor or contractor with a physician's or an allowed practitioner's prescription or order:

(i) without the necessity of fitting or instruction on its use; or

(ii) fitting and instruction can be provided by the prime vendor or contractor in compliance with HHSC [~~department~~] criteria;

(C) dispensing or providing the DME or supplies through a prime vendor or contractor will not limit or impair the accessibility and availability of the DME or supplies to the recipient [~~recipients~~] requiring the DME or supplies;

(D) dispensing or providing the DME or supplies through a prime vendor or contractor will not result in the recipient [~~recipients~~] receiving those DME or supplies in an unusable condition; and

(E) acquiring the DME or supplies through a prime vendor or contractor using a competitive process will result in cost savings to HHSC's [~~the department~~].

(2) HHSC [~~the department~~] may limit the number of providers with whom it will contract using the following criteria:

(A) all providers must submit a complete response to each section of HHSC's [~~the department's~~] procurement offer which will be used to evaluate provider qualifications, DME and supplies specifications, and accessibility and pricing provisions. Providers who fail to submit complete responses will be excluded from evaluation and consideration;

(B) the number of providers may be limited to only the number required to ensure statewide accessibility to the DME and supplies being procured; and

(C) the number of qualified providers will be limited to those providers who submit competitive responses which will result in savings to HHSC [~~the department~~].

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

Filed with the Office of the Secretary of State on May 24, 2022.

TRD-202202009
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 438-2934

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

The Public Utility Commission of Texas (commission) proposes the repeal of 16 Texas Administrative Code (TAC) §25.55 relating to Weather Emergency Preparedness and proposes new 16 TAC §25.55 relating to Weather Emergency Preparedness. New 16 TAC §25.55 will require generation entities and transmission service providers (TSPs) in the ERCOT power region to maintain preparation standards for both winter and summer seasons. The new rule will also require the Electric Reliability Council of Texas, Inc. (ERCOT) to conduct on-site inspections of generation resources and transmission facilities in the ERCOT region.

New 16 TAC §25.55 implements §13 and §16 of Senate Bill 3 from the 87th Regular Session of the Texas Legislature, which amended Public Utility Authority Act (PURA) §35.0021 relating to Emergency Weather Preparedness and §38.075 relating to Emergency Weather Preparedness.

The commission also requests comment from interested persons on the following areas:

1. For Transmission Service Providers (TSPs) that provide comment on proposed §25.55, provide information related to wind-loading design criteria for the 345 kV network.

2. Does proposed 25.55(e) and proposed 25.55(h) appropriately define "repeated or major weather-related forced interruptions of service"?

Comments responding to these questions should be filed in accordance with the instructions below under "Public Comments."

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

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

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;

(6) the proposed rule will repeal an existing regulation, but it will replace that regulation with a similar regulation;

(7) the same number of individuals will be subject to the proposed rule's applicability as were subject to the applicability of the rule it is being proposed to replace; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Ramya Ramaswamy, senior engineering specialist with the market analysis division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Ms. Ramaswamy has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the improved ability of the electric grid to withstand extreme winter and summer weather events in the future. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Ms. Ramaswamy has determined that the economic costs to persons required to comply with the proposed rule will vary on an individual basis, depending on the current weather preparation readiness of the facilities and generation resources to which the rule is applicable.

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on July 1, 2022, at 9:00 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by June 23, 2022. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by June 23, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53401.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

16 TAC §25.55

Statutory Authority

The repeal is proposed under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The rule is also proposed under §35.0021, which requires the commission to adopt rules that require each provider of electric generation service in the ERCOT power region to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency; and §38.075, which requires the commission to adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare its facilities to maintain service quality and reliability during a weather emergency.

Cross Reference to Statute: Public Utility Regulatory Act §14.001, §14.002, §35.0021, and §38.075.

§25.55. Weather Emergency Preparedness.

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

Filed with the Office of the Secretary of State on May 26, 2022.

TRD-202202050
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 936-7244

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16 TAC §25.55

Statutory Authority

The rule is proposed under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the Public Utility Commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The rule is also proposed under §35.0021, which requires the commission to adopt rules that require each provider of electric generation service in the ERCOT power region to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency; and §38.075, which requires the commission to adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare its facilities to maintain service quality and reliability during a weather emergency.

Cross Reference to Statute: Public Utility Regulatory Act §14.001, §14.002, §35.0021, and §38.075.

§25.55. Weather Emergency Preparedness.

(a) Application. This section applies to the Electric Reliability Council of Texas, Inc. (ERCOT) and to generation entities and transmission service providers (TSPs) in the ERCOT power region.

(1) A generation resource with an ERCOT-approved notice of suspension of operations for the summer season or winter season is not required to comply with this section until the return to service date identified in its notice of change of generation resource designation required under the ERCOT protocols.

(2) A new generation resource or transmission facility that is scheduled to begin commercial operations during the summer season or winter season must meet the requirements of this section prior to either the commercial operations date established in the ERCOT interconnection process for generation resources or initial energization for transmission facilities, as applicable.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise.

(1) Energy storage resource--An energy storage system registered with ERCOT as an energy storage resource for the purpose of providing energy or ancillary services to the ERCOT grid and associated facilities controlled by the generation entity that are behind the system's point of interconnection, necessary for the operation of the system, and not part of a manufacturing process that is separate from the generation of electricity.

(2) Generation entity--An ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource.

(3) Generation resource--A generator registered with ERCOT as a generation resource and capable of providing energy or ancillary services to the ERCOT grid, as well as associated facilities controlled by the generation entity that are behind the generator's point of interconnection, necessary for the operation of the generator, and not part of a manufacturing process that is separate from the generation of electricity.

(4) Inspection--Activities that ERCOT or its agents engage in to determine whether a generation entity is in compliance with all or parts of subsection (c) of this section or whether a TSP is in compliance with all or parts of subsection (f) of this section. An inspection may include site visits, assessments of procedures, interviews, and review of information provided by a generation entity or TSP in response to a request by ERCOT, including review of evaluations conducted by the generation entity or TSP or its contractor.

(5) Major weather-related forced interruption of service--The loss of 7,500 megawatt-hours of generation service or transmission capability occurring as a result of a weather emergency.

(6) Repeated weather-related forced interruption of service--Three or more of any combination of the following occurrences as a result of a weather emergency within any three year period: a failure to start, a forced outage, or a deration of more than fifty percent of the nameplate capacity of a generation resource or a transmission facility.

(7) Resource--A generation resource or energy storage resource.

(8) Summer season--June 1 to September 30 each year.

(9) Transmission facility--A transmission-voltage element inside the fence surrounding a TSP's high-voltage switching station or substation.

(10) Weather critical component--Any component of a resource or transmission facility that is susceptible to fail during a weather emergency, the occurrence of which failure is likely to significantly hinder the ability of the resource or transmission facility to function as intended or, for a resource, is likely to lead to a trip, derate, or failure to start.

(11) Weather emergency--A situation resulting from weather conditions that produces significant risk for a TSP that firm load must be shed or a situation for which ERCOT provides advance notice to market participants involving weather-related risks to the ERCOT power region.

(12) Weather emergency preparation measures--Measures that a generation entity or TSP takes to support the function of a resource or transmission facility during a weather emergency.

(13) Winter season--December 1 to March 31 each year.

(c) Weather emergency preparedness reliability standards for a generation entity.

(1) Winter season preparations. By December 1 each year, a generation entity must complete the following winter weather emergency preparation measures for each resource under its control. A generation entity must maintain these measures throughout the winter season. A generation entity must update its winter weather emergency preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures reasonably expected to ensure the sustained operation of all cold weather critical components during winter weather conditions. Such measures include, as appropriate for the resource:

(i) Installation of adequate wind breaks and other structural preparations as needed for resources susceptible to outages or derates caused by wind;

(ii) Installation of insulation and enclosures for all cold weather critical components;

(iii) Inspection of existing thermal insulation and associated forms of water-proofing for damage or degradation, and repair of damaged or degraded insulation and associated forms of water-proofing;

(iv) Assurance of the availability and appropriate safekeeping of sufficient chemicals, auxiliary fuels, and other materials necessary for sustained operations during a winter weather emergency;

(v) Assurance of the operability of instrument air moisture prevention systems;

(vi) Maintenance of freeze protection equipment for all cold weather critical components, including fuel delivery systems controlled by the generation entity, and testing freeze protection equipment on a monthly basis from November 1 through March 31; and

(vii) Installation of monitoring systems for all cold weather critical components, including circuitry that provides freeze protection or prevents instrument air moisture;

(B) Beginning in 2023, implement weather emergency preparation measures, in addition to the weather emergency preparation measures required by subparagraph (A) of this paragraph, reasonably expected to ensure sustained operation of the resource during the lesser of the minimum ambient temperature at which the resource has experienced sustained operations or the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study,

required under subsection (i) of this section, for the weather zone in which the resource is located.

(C) Review the adequacy of staffing plans to be used during a winter weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on winter weather preparations and operations.

(2) Summer season preparations. By June 1 each year, a generation entity must complete the following summer weather emergency preparation measures for each resource under its control. A generation entity must maintain these measures throughout the summer season. A generation entity must update its summer weather emergency preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures reasonably expected to ensure the sustained operation of all hot weather critical components during summer weather conditions. Such measures include, as appropriate for the resource:

(i) Identification of regulatory and legal limitations of cooling capacity, water withdrawal, maximum discharge temperatures, and rights for additional water supply;

(ii) Assurance of adequate water supplies for cooling towers, reservoirs, heat exchangers, and adequate cooling capacity of the water supplies used in the cooling towers, reservoirs, and heat exchangers;

(iii) Assurance of availability and appropriate safekeeping of adequate equipment to remove heat and moisture from all hot weather critical components;

(iv) Assurance of the availability of sufficient chemicals, coolants, auxiliary fuels, and other materials necessary for sustained operations during a summer weather emergency;

(v) Maintenance of all hot weather critical components, including air flow or cooling systems, and testing of all components on a monthly basis from May 1 through September 30; and

(vi) Installation of monitoring systems for all hot weather critical components.

(B) Beginning in 2023, implement weather emergency preparation measures, in addition to the weather emergency preparation measures required by subparagraph (A) of this paragraph, reasonably expected to ensure sustained operation of the resource during the greater of the maximum ambient temperature at which the resource has experienced sustained operations or the 95th percentile maximum average 72-hour temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the resource is located.

(C) Review the adequacy of staffing plans to be used during a summer weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on summer weather preparations and operations.

(3) Declaration of preparedness. A generation entity must submit to ERCOT, on a form prescribed by ERCOT, the following declarations of weather preparedness:

(A) No earlier than November 1 and no later than December 1 of each year, a generation entity must submit a declaration of winter weather preparedness that:

(i) Identifies every resource under the entity's control for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the generation entity to complete the requirements of paragraph (1) of this subsection;

(iii) Provides the minimum ambient temperature at which each resource has experienced sustained operations, as measured at the resource site or the weather station nearest to the resource site;

(iv) Includes any additional information required by the ERCOT protocols; and

(v) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all applicable activities described in paragraph (1) of this subsection, and to the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(B) No earlier than May 1 and no later than June 1 of each year, a generation entity must submit a declaration of summer weather preparedness that at a minimum:

(i) Identifies every resource under the entity's control for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the generation entity to complete the requirements of paragraph (2) of this subsection;

(iii) Provides the maximum ambient temperature at which each resource has experienced sustained operations, as measured at the resource site or the weather station nearest to the resource site;

(iv) Includes any additional information required by the ERCOT protocols; and

(v) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all applicable activities described in paragraph (2) of this subsection, and to the accuracy and veracity of the information described in subparagraph (B) of this paragraph.

(C) A generation entity must submit the appropriate declaration of preparedness to ERCOT prior to returning a mothballed or decommissioned resource to service during the winter or summer season.

(4) No later than December 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each generation entity has submitted the declaration of winter weather preparedness required by paragraph (3)(A) of this subsection for each resource under the generation entity's control.

(5) No later than June 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each generation entity has submitted the declaration of summer weather preparedness required by paragraph (3)(B) of this subsection for each resource under the generation entity's control.

(d) ERCOT inspection of resources.

(1) ERCOT must conduct inspections of resources and may prioritize inspections based on factors such as whether a resource is critical for electric grid reliability; has experienced a forced outage, forced derate, or failure to start related to weather emergency conditions; or has other vulnerabilities related to weather emergency conditions. ERCOT must determine, in consultation with commission staff, the number, extent, and content of inspections, provided that every re-

source interconnected to the ERCOT power region must be inspected at least once every three years. ERCOT must develop, in consultation with commission staff, a winter weather inspection checklist and a summer weather inspection checklist for use during resource inspections. Inspections may be conducted by ERCOT's employees or contractors.

(A) ERCOT must provide each generation entity at least 48 hours' notice of an inspection unless otherwise agreed by the generation entity and ERCOT. Upon provision of the required notice, a generation entity must grant access to its facility to ERCOT and to commission staff, including an employee of a contractor designated by ERCOT or the commission.

(B) During the inspection, a generation entity must provide ERCOT and commission staff access to any part of the facility upon request. A generation entity must provide access to inspection, maintenance, and other records associated with weather emergency preparation measures and must make the generation entity's staff available to answer questions. A generation entity may escort ERCOT and commission staff at all times during an inspection. During the inspection, ERCOT or commission staff may take photographs or video recordings of any part of the facility and may conduct interviews of facility personnel designated by the generation entity.

(2) ERCOT inspection report.

(A) ERCOT must provide a report on its inspection of a resource to the generation entity. The inspection report must address whether the generation entity has complied with the requirements in subsection (c)(1) or (2) of this section.

(B) If the generation entity has not complied with a requirement in subsection (c)(1) or (2) of this section, ERCOT must provide the generation entity a reasonable period to cure the identified deficiencies.

(i) The cure period determined by ERCOT must consider what weather emergency preparation measures the generation entity may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the resource's noncompliance, and the complexity of the measures needed to cure the deficiency.

(ii) The generation entity may request ERCOT provide a longer period to cure the identified deficiencies. The request must be accompanied by documentation that supports the request.

(iii) ERCOT, in consultation with commission staff, will determine the final cure period after considering a request for a longer period to cure the identified deficiencies.

(C) ERCOT must report to commission staff any generation entity that does not remedy the deficiencies identified under subparagraph (A) of this paragraph within the cure period determined by ERCOT under subparagraph (B) of this paragraph.

(D) A generation entity reported by ERCOT to commission staff under subparagraph (C) of this paragraph will be subject to enforcement investigation under §22.246 (relating to Administrative Penalties) of this title. A violation of this section is a Class A violation under §25.8(b)(3)(A) (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers) and may be subject to a penalty not to exceed $1,000,000 per violation per day.

(e) Weather-related failures by a generation entity to provide service. A generation entity with a resource that experiences repeated or major weather-related forced interruptions of service must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified professional engineer must not be an employee of the generation entity or its affiliate. The qualified professional engineer must not have participated in previous assessments for the resource for at least five years, unless the generation entity provides documentation that no other qualified professional engineers are reasonably available for engagement. The qualified professional engineer must conduct a root cause analysis of the failure and develop a corrective action plan to address any weather-related causes of the failure. The generation entity must submit the qualified professional engineer's assessment to the commission and ERCOT. A generation entity to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to commission staff for investigation any generation entity that does not comply with a provision of this subsection.

(f) Weather emergency preparedness reliability standards for a TSP.

(1) Winter season preparations. By December 1 each year, a TSP must complete the following winter weather preparation measures for its transmission facilities. A TSP must maintain these measures throughout the winter season. A TSP must update its winter weather preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures reasonably expected to ensure the sustained operation of all cold weather critical components during winter weather conditions. Such measures include, as appropriate for the facility:

(i) Confirmation of the operability of all systems and subsystems containing all cold weather critical components;

(ii) Confirmation that the sulfur hexafluoride gas in breakers and metering and other electrical equipment is at the correct pressure and temperature to operate safely during winter weather emergencies, and perform annual maintenance that tests sulfur hexafluoride breaker heaters and supporting circuitry to assure that they are functional; and

(iii) Confirmation of the operability of power transformers and auto transformers in winter weather emergencies by:

(I) Inspecting heaters in the control cabinets;

(II) Verification that main tank oil levels are appropriate for actual oil temperature;

(III) Inspecting bushing oil levels;

(IV) Inspecting the nitrogen pressure, if necessary; and

(V) Verification of proper oil quality such that moisture and dissolved gases are within acceptable ranges for winter weather conditions.

(B) Beginning in 2023, implement weather emergency preparation measures, in addition to the weather emergency preparation measures required by paragraph (A) of this subsection, reasonably expected to ensure the sustained operation of the TSP's transmission facilities during the lesser of the minimum ambient temperature at which the facility has experienced sustained operations or the 95th percentile minimum average 72-hour temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the facility is located.

(C) Review the adequacy of staffing plans to be used during a winter weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on winter weather preparations and operations.

(2) Summer season preparations. By June 1 each year, a TSP must complete the following summer weather preparation measures for its transmission facilities. A TSP must maintain these measures throughout the summer season. A TSP must update its summer weather preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section.

(A) Implement weather emergency preparation measures reasonably expected to ensure the sustained operation of all hot weather critical components during summer weather conditions. Such measures include, as appropriate for the facility:

(i) Inspecting transformer coolers on a monthly basis between May 1 and September 30;

(ii) Cleaning transformer coolers on a regular basis during the summer season;

(iii) Verifying proper cooling fan and pump control capabilities and settings;

(iv) Confirmation of the availability of sufficient chemicals, coolants, and other materials necessary for sustained operations during a summer weather emergency; and

(v) Confirmation that sufficient chemicals, coolants, and other materials necessary for sustained operations during a summer weather emergency are protected from heat and drought.

(B) Beginning in 2023, implement weather emergency preparation measures, in addition to the weather emergency preparation measures required by subparagraph (A) of this paragraph, reasonably expected to ensure the sustained operation of the TSP's transmission facilities during the greater of the maximum ambient temperature at which the facility has experienced sustained operations or the 95th percentile maximum average 72-hour temperature reported in ERCOT's historical weather study, required under subsection (i) of this section, for the weather zone in which the facility is located.

(C) Review the adequacy of staffing plans to be used during a summer weather emergency and revise the staffing plans, as appropriate.

(D) Train relevant operational personnel on summer weather preparations and operations.

(3) Declaration of preparedness. A TSP must submit to ERCOT, on a form prescribed by ERCOT, the following declarations of weather preparedness:

(A) No earlier than November 1 and no later than December 1 of each year, a TSP must submit a declaration of winter weather preparedness that:

(i) Identifies each transmission substation or switchyard under the TSP's control for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the TSP to complete the requirements of paragraph (1) of this subsection,

(iii) Provides the minimum ambient temperature at which each substation or switchyard has experienced sustained operations, as measured at the transmission facility or the weather station nearest to the transmission facility;

(iv) Includes any additional information required by the ERCOT protocols; and

(v) Includes a notarized attestation sworn to by the TSP's highest-ranking representative, official, or officer with binding authority over the TSP, attesting to the completion of all activities described in paragraph (1) of this subsection, and to the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(B) No earlier than May 1 and no later than June 1 of each year, a TSP must submit a declaration of summer weather preparedness that at a minimum:

(i) Identifies each transmission substations or switchyard under the TSP's control for which the declaration is being submitted;

(ii) Summarizes all activities engaged in by the TSP to complete the requirements of paragraph (2) of this subsection,

(iii) Provides maximum ambient temperature at which each substation or switchyard has experienced sustained operations, as measured at the transmission facility or the weather station nearest to the transmission facility;

(iv) Includes any additional information required by the ERCOT protocols; and

(v) Includes a notarized attestation sworn to by the TSP's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all activities described in paragraph (2) of this subsection, and to the accuracy and veracity of the information described in subparagraph (B) of this paragraph.

(4) No later than December 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each TSP has submitted the declaration of winter weather preparedness required by paragraph (3)(A) of this subsection for all transmission facilities under the TSP's control.

(5) No later than June 20 of each year, ERCOT must file with the commission a compliance report that addresses whether each TSP has submitted the declaration of summer weather preparedness required by paragraph (3)(B) of this subsection for all transmission facilities under the TSP's control.

(g) ERCOT inspections of transmission facilities.

(1) ERCOT must conduct inspections of transmission facilities and may prioritize inspections based on factors such as whether a transmission facility is critical for electric grid reliability; has experienced a forced outage or other failure related to weather emergency conditions; or has other vulnerabilities related to weather emergency conditions. ERCOT must determine, in consultation with commission staff, the number, extent, and content of inspections, as well as develop a risk-based methodology for selecting at least ten percent of substations or switchyards providing transmission service to be inspected at least once every three years. ERCOT must develop, in consultation with commission staff, a winter weather inspection checklist and a summer weather inspection checklist for use during facility inspections. Inspections may be conducted by ERCOT's employees or contractors.

(A) ERCOT must provide each TSP at least 48 hours' notice of an inspection unless otherwise agreed by the TSP and ERCOT. Upon provision of the required notice, a TSP must grant access to its facility to ERCOT and commission staff, including an employee of a contractor designated by ERCOT or the commission to conduct, oversee, or observe the inspection.

(B) During the inspection, a TSP must provide ERCOT and commission staff access to any part of the facility upon request. A TSP must provide access to inspection, maintenance, and other records associated with weather preparation measures, and must make the TSP's staff available to answer questions. A TSP may escort ERCOT

and commission staff at all times during an inspection. During the inspection, ERCOT and commission staff may take photographs and video recordings of any part of the facility and may conduct interviews of facility personnel designated by the TSP.

(2) ERCOT inspection report.

(A) ERCOT must provide a report on its inspection of a transmission system or facility to the TSP. The inspection report must address whether the TSP has complied with the requirements in subsection (f)(1) or (2) of this subsection.

(B) If the TSP has not complied with a requirement in subsection (f)(1) or (2) of this subsection, ERCOT must provide the TSP a reasonable period to cure the identified deficiencies.

(i) The cure period determined by ERCOT must consider what weather emergency preparation measures the TSP may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the TSP's noncompliance, and the complexity of the measures needed to cure the deficiency.

(ii) The TSP may request ERCOT provide a longer period to cure the identified deficiencies. The request must be accompanied by documentation that supports the request.

(iii) ERCOT, in consultation with commission staff, will determine the final cure period after considering a request for a longer period to cure the identified deficiencies.

(C) ERCOT must report to commission staff any TSP that does not remedy the deficiencies identified under subparagraph (A) of this paragraph within the cure period determined by ERCOT under subparagraph (B) of this paragraph.

(D) A TSP reported by ERCOT to commission staff under subparagraph (C) of this paragraph will be subject to enforcement investigation under §22.246 (relating to Administrative Penalties) of this title. A violation of this section is a Class A violation under section §25.8(b)(3)(A) and may be subject to a penalty not to exceed $1,000,000 per violation per day.

(h) Weather-related failures by a TSP to provide service. A TSP with a transmission facility that experiences repeated or major weather-related forced interruptions of service must contract with a qualified professional engineer to assess its weather emergency preparation measures, plans, procedures, and operations. The qualified professional engineer must not be an employee of the TSP or its affiliate. The qualified professional engineer must not have participated in previous assessments for this facility for at least five years, unless the TSP provides documentation that no other qualified professional engineers are reasonably available for engagement. The qualified professional engineer must conduct a root cause analysis of the failure and develop a corrective action plan to address any weather-related causes of the failure. The TSP must submit the qualified professional engineer's assessment to the commission and ERCOT. A TSP to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to commission staff for investigation any TSP that violates this subsection.

(i) ERCOT historical weather study. ERCOT must study historical weather data across each weather zone classified in the ERCOT protocols. ERCOT must file with the commission a report summarizing the results of the historical weather study at least once every five years, beginning no later than November 1, 2026.

(1) At a minimum, ERCOT must calculate the 90th, 95th, and 99th percentiles of:

(A) the daily minimum temperature in each weather zone;

(B) the daily maximum temperature in each weather zone;

(C) the maximum sustained wind speed in each weather zone;

(D) the minimum average 72-hour temperature in each weather zone;

(E) the maximum average 72-hour temperature in each weather zone; and

(F) the minimum average wind chill in each weather zone.

(2) ERCOT may add additional parameters to the historical weather study.

(3) ERCOT must take into consideration weather predictions produced by the office of the state climatologist when preparing the historical weather study.

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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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 90. OFFENDER EDUCATION PROGRAMS FOR ALCOHOL AND DRUG-RELATED OFFENSES

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 90, Subchapter A, §90.1; Subchapter B, §90.21; Subchapter D, §90.40; Subchapter E, §§90.51 - 90.54; Subchapter F, §90.80; and Subchapter G, §§90.91 - 90.94; new rules at Subchapter A, §90.10; Subchapter B, §§90.20, 90.22-90.28; Subchapter C, §§90.30 - 90.34; Subchapter D, §§90.41 - 90.49; Subchapter E, §90.50; and Subchapter G, §90.95; and the repeal of existing rules at Subchapter A, §90.10; Subchapter B, §§90.20, 90.22 - 90.27; Subchapter C, §§90.30 - 90.34; Subchapter D, §§90.41 - 90.49; and Subchapter E, §90.50 regarding the Court-Ordered Education Programs. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 90 implement new Texas Government Code, Chapter 171, relating to the Court-Ordered Education Programs, formerly known as the Offender Education Programs. The rules also implement Texas Transportation Code,

Chapter 521, §§521.374 - 521.376, regarding the Drug Offender Education Program.

Senate Bill 1480

Senate Bill (SB) 1480, 87th Legislature, Regular Session (2021) changed the landscape of the Court-Ordered Education Programs by consolidating the requirements found in separate statutes previously governing the court-ordered programs into one statutory chapter for easier reference and organization.

This bill represents a significant change in the provision of instruction and the Department's regulatory framework for instructors and program providers associated with delivering court-ordered programs. The court-ordered programs available for persons subject to court orders involving community supervision for drug or alcohol-related offenses under new Texas Government Code, Chapter 171 are: the Alcohol Education Program for Minors (AEPM); the Drug Offender Education Program (DOEP); the DWI Education Program (DWIE) and the DWI Intervention Program (DWII). These programs are referenced under Texas Alcoholic Beverage Code §106.115; Texas Transportation Code §§521.374-721.376; Texas Code of Criminal Procedure, Chapter 42A, Articles 42A.403 and 42A.406; and Texas Code of Criminal Procedure, Chapter 42A, Articles 42A.404 and 42A.406, respectively.

Instructors and program providers will experience significant changes as a result of this bill, which is intended to benefit program participants and the general public, including: (A) online provision of course materials and curriculum by program providers, thus allowing court-ordered program instruction to reach participants throughout the state, and increasing business flexibility and cost savings for instructors and providers; (B) creation of a unified program provider license with one program fee for providers with multiple locations creating efficiencies for Department administration resulting in lower costs; (C) repeal of the requirement for program provider branch locations and program headquarters organizational structure; and (D) introduction of new program fees for program providers and instructors related to licensing and court-ordered program endorsement fees.

The proposed rules implement SB 1480 for the Court-Ordered Education Programs by: (1) amending program definitions within the chapter; (2) prescribing eligibility requirements and minimum qualifications for license applicants; (3) setting the minimum requirements and responsibilities for licensed providers and instructors; (4) establishing program provider and instructor endorsement requirements; (5) mandating minimum standards for online and in-person program provider delivery of court-ordered program curriculum; (6) amending and adding program fees for program providers and instructors as provided by the new statute; (7) updating rule terminology to include new license types, program provider structure changes, and court-ordered program endorsements; (8) imposing criminal penalties for violations involving the misuse of certificates of program completion; and (9) updating rule language to recognize repealed statutory references.

The proposed rules in this rulemaking represent the first phase of the implementation of SB 1480. A subsequent rulemaking completing the implementation of SB 1480 shall occur later and include rule changes on court-ordered program curriculum, program provider reporting, audits and inspections, and continuing education.

Senate Bill 181

The proposed rules also implement Senate Bill (SB) 181, 87th Legislature, Regular Session (2021). SB 181 overlaps with SB 1480, and both bills amend Transportation Code §§521.374, 521.375, and 521.376. The changes, in part, affect the Drug Offender Education Program approved and administered by the Department. Texas Transportation Code §521.374(a)(1), as amended, provides that a person may successfully complete an in-person or online drug offender educational program approved by the Department under Texas Government Code, Chapter 171. Texas Transportation Code §521.375(a) and (b), as amended, requires the Department to work with the Texas Department of Public Safety (DPS) to jointly adopt rules for the qualification and approval of providers of in-person and online drug offender educational programs approved by the Department. Texas Transportation Code §521.376(a), as amended, assigns certain duties to the Department regarding the in-person and online drug offender educational programs approved by the Department. The proposed rules implement SB 181 and SB 1480 related to the Drug Offender Education Program approved and administered by the Department.

As a result of the legislative changes, the proposed rules include extensive amendments and subsequent repeals and renumbering of rule sections within 16 TAC Chapter 90. Moreover, the proposed rules introduce new rule sections in Subchapters A-E and G to provide greater clarity, interpretation, and implementation of the provisions of SB 1480 and SB 181 relating to the Court-Ordered Education Program.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The proposed rules amend §90.1, Authority, by deleting repealed statutory references and including a reference to Texas Government Code, Chapter 171 for court-ordered programs for alcohol and drug-related offenses.

The proposed rules add new §90.10, Definitions, which establishes the meaning of the words and terms employed throughout the rule chapter. The new rule replaces existing §90.10 to: (1) include definitions for words and terms introduced by SB 1480; (2) added a definition for "module", (3) delete definitions for "Administrator", "Branch Office/Site", "Course Size", "Drug Offender", and "Program/Provider Headquarters"; (4) modify terminology for existing definitions consistent with SB 1480; (5) renumber the provisions as needed; and (6) correct rule language.

The proposed rules repeal existing §90.10, Definitions.

Subchapter B, Instructor Requirements.

The proposed rules add new §90.20, Instructor License Required, which introduce changes to instructor licensing structure and the addition of court-ordered endorsements to the instructor license from SB 1480. The new rule replaces existing rule §90.20 to: (1) amend the section header changing the term "certification" to "license"; (2) update rule language to include use of the term "endorsement" to refer to the court-ordered programs consistent with SB 1480; and (3) include requirements for instructors to hold appropriate license endorsements to teach participants at program provider locations.

The proposed rules repeal existing §90.20, Instructor Certification Required.

The proposed rules amend §90.21, Instructor License - Eligibility Requirements, by updating the section header and rule terms consistent with SB 1480, and correct rule language.

The proposed rules add new §90.22, Instructor License - Application for License and First Endorsement, which describes the Department procedure by which an instructor applicant may apply and obtain for a license and an endorsement to instruct a court-ordered program. The new rule will: (1) update the section header and rule terms consistent with SB 1480; (2) identify the new instructor licensing fee; and (3) update terminology in the section header and rule consistent with SB 1480. This rule replaces existing §90.23 and is relocated to more accurately reflect the Department's current licensing process.

The proposed rules add new §90.23, Instructor License - Instructor Training Course and Examination, which identifies the Department's training course and examination process that instructor applicants must successfully complete prior to licensure. The new rule will update the section header consistent with SB 1480. This rule replaces existing §90.22 and is relocated to more accurately reflect the Department's current licensing process.

The proposed rules add new §90.24, Instructor License - Additional Endorsements, to describe the new procedure introduced by SB 1480 by which an instructor may obtain license endorsements to instruct other court-ordered programs, and the endorsement disposition at time of renewal.

The proposed rules add new §90.25, Instructor License Term; Renewals, which describes the license renewal process for the program. The new rule will: (1) specify the two-year term of the license and the concurrent endorsement; (2) describe the Department procedure for license renewal and late renewal; (3) mandate an instructor hold a current license to instruct a specific court-ordered program(s); and (4) update the section header and rule language. This rule replaces existing §90.24.

The proposed rules add new §90.26, Instructor Continuing Education Requirements, which identifies the continuing education requirements by court-ordered program for instructors to meet prior to license renewal. The new rule will: (1) remove the previous minimum teaching requirement of courses during the instructor licensing period to obtain license renewal; (2) replaces the word "attend" with "complete" to recognize the online provision of court-ordered programs as authorized by SB 1480; and (3) updates the rule language and section header. This rule replaces existing §90.25.

The proposed rules add new §90.27, Instructor Continuing Education Audits - All Programs, which describes the Department auditing system and the responsibilities of the instructor to maintain continuing education records, and details the process for instructor reporting of continuing education hours necessary for license renewal. This rule replaces existing §90.26.

The proposed rules add new §90.28, Instructor Responsibilities, which: (1) requires instructors to report their own criminal convictions or those of other instructors; (2) sets notice requirements for changes in instructor name, mailing address, telephone number or email address; (3) shifts instructor course and provider certification requirements for teaching court-ordered programs to new §90.20 and §90.50; and (4) removes the requirement that an instructor provide his/her certification number and Department complaint information to participants. This rule replaces existing §90.27.

The proposed rules repeal existing §90.22, Instructor Certification - Instructor Training Course and Examination.

The proposed rules repeal existing §90.23, Instructor Certification - Application.

The proposed rules repeal existing §90.24, Instructor Certification Term; Renewals.

The proposed rules repeal existing §90.25, Instructor Teaching and Continuing Education Requirements.

The proposed rules repeal existing §90.26, Instructor Continuing Education Audits - All Programs.

The proposed rules repeal existing §90.27, Instructor Responsibilities.

Subchapter C, Program Provider License Requirements.

The existing rules in this subchapter are being repealed to accommodate proposed new rule sections to reflect the licensing changes for program providers in implementing SB 1480.

The proposed rules add new §90.30, Program Provider License Required, which introduce changes to program provider licensing structure and the addition of court-ordered endorsements to the program provider license from SB 1480. The proposed rules allow a program provider to have but one license with up to four court-ordered endorsements to operate. Providers are no longer required to license each location owned. Branch locations have been eliminated by SB 1480. Moreover, providers will now be able to offer or provider instruction statewide with the ability to deliver online service. The new rule replaces existing rule §90.30 to: (1) require program providers have a current license with the applicable endorsement for each court-ordered program offered or provided to participants; (2) ensure each court-ordered program is taught by licensed instructors with the proper endorsement for the program(s) instructed; (3) require that program providers conduct instruction using the Department-approved instructor manuals and curriculum; (4) delete references to "Program/Provider"; (5) allow a program provider to offer or provide a court-ordered program in-person, online, or both, in accordance with SB 1480; and (6) update the rule language and section heading.

The proposed rules add new §90.31, Program Provider License - Application for License and Endorsements, which describes the Department procedure by which a program provider applicant may obtain for a license and an endorsement to offer or provide a court-ordered program. The new rule replaces existing rule §90.31 to: (1) require program providers be licensed and possess applicable endorsement(s) for each court-ordered program offered or provided; (2) describe the Department procedure for an applicant to obtain a program provider license; (3) delete references to "headquarters", "administrator", "program/provider" and "branch sites" from license requirements; (4) include new standards for a program provider applicant that intends to offer or provider online instruction to participants; and (5) update the rule language and section heading.

The proposed rules add new §90.32, Program Provider License - Additional Endorsements, which describes the new procedure introduced by SB 1480 by which a program provider may obtain additional license endorsements to offer or provide more than one court-ordered program, and the endorsement disposition at time of renewal. The new rule replaces existing rule §90.32 to: (1) implement SB 1480 by requiring a program provider who offers or provides additional court-ordered program types to hold the appropriate endorsement for each program offered or provided to participants; (2) describe the Department procedure for an applicant to obtain additional endorsements; (3) delete licensing requirements associated with branch sites and headquarters; (4) clarify that endorsements renew with the program provider li-

cense renewal; and (5) update the rule language and section headers.

The proposed rules add new §90.33, Program Provider License Term; Renewal, which describes the program provider license renewal process. The new rule replaces existing rule §90.33 to: (1) specify the two-year term of the license and the concurrent endorsement; (2) identify the Department procedure for program provider license renewal and late renewal; (3) delete references to "program/provider"; (4) mandate a program provider hold a current license to offer or provide a court-ordered program; (5) clarify that endorsements renew with the program provider license renewal; and (6) update the rule language and section headers.

The proposed rules add new §90.34, Program Provider License - Change of Address, Ownership and Other Information, which describes the program provider's responsibilities to report to the Department when there is a change in specific information affecting business operations. The new rule replaces existing rule §90.34 to: (1) require a licensee to notify the Department within 30 days of any change in program provider information as noted in the rule; (2) define what conditions will constitute a change in ownership of the program provider; (3) delete references to "program/provider"; (4) require that a program provider maintain a registered agent within the state for service of process; and (5) update the rule language and section header.

The proposed rules repeal existing §90.30, Program/Provider Certification Requirement.

The proposed rules repeal existing §90.31, Program/Provider Certification Application - Headquarters.

The proposed rules repeal existing §90.32, Program/Provider Certification Application - Branch Sites and Other Locations.

The proposed rules repeal existing §90.33, Program/Provider Certification Term; Renewal.

The proposed rules repeal existing §90.34, Program/Provider Certification - Change of Address and Providing Information.

Subchapter D, Program Requirements - Curriculum, Courses, Classrooms, Certificates.

This subchapter is being revised to add new rules and to make amendments to existing rules. Many of the proposed new rules are like to the existing rules in substance, but the rules are being reorganized and renumbered. The rules in this subchapter will also be part of a subsequent rulemaking regarding court-ordered program curriculum.

The proposed rules amend §90.40, Program Curriculum and Materials - All Programs, to: (1) identify the course curriculum approved for each online and in-person court-ordered program; (2) update rule terms consistent with SB 1480; and (3) correct language.

The proposed rules add new §90.41, Program Rules - Drug Offender Education Program, which addresses the joint rulemaking authority between the Department and the Texas Department of Public Safety (DPS) for the adoption of rules related to the qualification and approval of providers for the Drug Offender Education Program, as required under Transportation Code, Chapter 521, and as amended by SB 1480 and SB 181. This rule replaces existing §90.42.

The proposed rules add new §90.42, General Program and Course Requirements - All Programs, which define the responsibilities for program providers and instructors when presenting instruction to participants for in-person and online court-ordered programs, and updated rule language consistent with SB 1480. This rule replaces existing §90.43.

The proposed rules add new §90.43, Additional Course Requirements for the Drug Offender Education Program, which: (1) renames "class sessions" to "modules"; (2) details the course minimums for class instruction hours, duration and number of daily class modules, and administration of course examinations; and (3) sets the maximum number of participants for the specific court-ordered program. This rule replaces existing §90.44.

The proposed rules add new §90.44, Additional Course Requirements for the Alcohol Education Program for Minors, which: (1) renames "class sessions" to "modules"; (2) details the course minimums for class instruction hours, duration and number of daily class modules, and administration of course examinations; and (3) sets the maximum number of participants for the specific court-ordered program. This rule replaces existing §90.45.

The proposed rules add new §90.45, Additional Course Requirements for the DWI Education Program (DWIE), which: (1) details the course minimums for class instruction hours, (2) prescribes the number of daily hours of instruction and administration of course examinations; (3) increases the maximum number of participants to 30 for the specific court-ordered program; and (4) addresses the disposition of the certificate of completion to the appropriate court officials and the Texas Department of Public Safety. This rule replaces existing §90.46.

The proposed rules add new §90.46, Additional Course Requirements for the DWI Intervention Programs (DWII), which: (1) renames "class sessions" to "modules"; (2) details the course minimums for class instruction hours, duration and number of daily and weekly class modules; (3) sets the maximum number of participants for the specific court-ordered program; (4) provides for make-up class modules for excused participant absences, and individual participant sessions with exit interviews; and (5) addresses the disposition of the certificate of completion to the appropriate court officials and DPS. This rule replaces existing §90.47.

The proposed rules add new §90.47, In-Person Classroom Facilities and Equipment, which: (1) details the necessary equipment and facilities for an in-person program provider to provide court-ordered program instruction to participants; (2) prohibits licensees from offering, providing, or instructing an in-person court-ordered program out of a private residence; (3) requires instructors to be physically present when providing in-person instruction of a court-ordered program; (4) bars licensees from presenting any recorded or videotaped material as a part of the course presentation; and (5) updates the rule language and section header. This rule replaces existing §90.48.

The proposed rules add new §90.48, Online Program Requirements, which defines the requirements for a program provider when offering newly authorized online court-ordered programs to participants. This proposed new rule is added to: (1) require that online program providers possess sufficient bandwidth and working equipment to allow for instruction of court-ordered programs in real-time; (2) mandate that online program providers employ Department-approved curriculum and materials under applicable laws and rules; (3) detail instructor and participant on-camera interaction requirements during instruction sessions, and empower the instructor to remove participants from class who fail to comply with those requirements; (4) prohibit

the instructor from admitting a participant without fully functional equipment; and (5) impose responsibility on program providers for the administration of and security for pre-course and post-course examination of participants.

The proposed rules add new §90.49, Certificate of Program Completion for Participants, which describes the program provider's responsibilities surrounding the care, control and issuance of program completion certificates to successful participants taking court-ordered programs. This new rule: (1) details the program provider's responsibilities for delivery of a certificate of program completion of a court-ordered program to each participant; (2) prohibits delivery of the certificate by electronic means; (3) sets the responsibilities for program providers under which they maintain certificate records, and the care, custody and control of program certificates; (4) describes the process by which a provider may issue duplicate certificates and return unassigned certificates; (5) establishes requirements on a program provider to protect unissued certificates and account for missing certificates with the Department; (6) addresses additional requirements for the DWIE and DWII Programs when delivering certificates of program completion to court officials and DPS; and (7) updates and clarifies the rule language. This rule replaces existing §90.49.

The proposed rules repeal existing §90.41, Program Curriculum and Rules - DWI Education Program. The statutory provisions requiring jointly-approved curriculum and rules for the DWI Education program were repealed by SB 1480.

The proposed rules repeal existing §90.42, Program Rules - Drug Offender Education Program (DOEP).

The proposed rules repeal existing §90.43, General Program and Course Requirements - All Programs.

The proposed rules repeal existing §90.44, Additional Course Requirements for the Drug Offender Education Program.

The proposed rules repeal existing §90.45, Additional Course Requirements for the Alcohol Education Program for Minors.

The proposed rules repeal existing §90.46, Additional Course Requirements for the DWI Education Program.

The proposed rules repeal existing §90.47, Additional Course Requirements for DWI Intervention Programs.

The proposed rules repeal existing §90.48, Classroom Facilities and Equipment.

The proposed rules repeal existing §90.49, Course Completion Certificates for Participants.

Subchapter E, Program Requirements - Administration and Other Responsibilities.

The proposed rules add new §90.50, Program Administration, which define the parameters of program operation for a program provider. This new rule replaces existing §90.50 to: (1) identify the responsibilities for program providers to set course fees, create course schedules and maintain program records for Department audit; (2) set restrictions on the court-ordered program referral policy for program providers and instructors for inquiring participants; (3) require program providers to resolve participant complaints; (4) instruct program providers to provide participants with notice concerning the complaint filing process with the Department; and (5) update the rule language consistent with SB 1480.

The proposed rules repeal existing §90.50, Program Administration.

The proposed rules amend §90.51, Recordkeeping Regarding Course Participants, to: (1) update rule language consistent with SB 1480; (2) clarify the type of address information the program provider is required to collect from participants for its records; (3) correct rule language; and (4) ease record storage requirements for program providers to respond to Department inspections and audit.

The proposed rules amend §90.52, Annual Reports, to update rule language consistent with SB 1480.

The proposed rules amend §90.53, Confidentiality, to update rule language consistent with SB 1480.

The proposed rules amend §90.54, Discrimination Prohibited, to update rule language consistent with SB 1480.

Subchapter F, Fees.

The proposed rules amend §90.80, Fees, which illustrate the new program fees framework established by SB 1480. Under the new framework, (1) initial license and renewal fees are now assessed on instructors, as well as providers; (2) program headquarters and branch location provisions have been eliminated; and (3) the requirements for separate licenses for each court-ordered program have been eliminated. The proposed rules will require a provider or an instructor to obtain one license with the option to add up to four court-ordered program endorsements, one for each program. The endorsement becomes a part of the license for the provider or instructor, and it renews at the same time with the license.

Under the proposed rules, the provider initial license and renewal fee remain unchanged. However, a provider is only required to obtain one license with the option to add up to four endorsements. A provider with multiple locations pays for one unitary license under which all the other locations will operate. The program headquarters and branch location fees have been eliminated. When the provider renews the license, there is one renewal fee that includes the license and the current endorsement(s).

Instructors, under the proposed rules, are now required to pay initial license and renewal fees, pursuant to SB 1480. However, like the provider license regime, an instructor is only required to obtain one license with the option to add up to four endorsements. When the instructor renews the license, there is one renewal fee that includes the license and the current endorsement(s). Consistent with SB 1480, the existing rule is amended to: (1) update rule language in line with SB 1480; (2) eliminate the fees associated with the headquarters and branch location framework which was repealed by SB 1480; (3) add new licensing and endorsement fees for instructors and program providers which reflect the new fee structure and which recognize one license per provider or instructor with up to four court-ordered endorsements; and (4) correct language.

Subchapter G, Enforcement.

The proposed rules amend §90.91, Complaints; Investigations, to update rule language consistent with SB 1480.

The proposed rules amend §90.92, Administrative Penalties and Sanctions, to update statutory citations consistent with SB 1480, and correct language.

The proposed rules amend §90.93, Enforcement Authority, to update statutory citations consistent with SB 1480.

The proposed rules amend §90.94, Additional Conduct Subject to Disciplinary Actions, to: (1) update rule language consistent with SB 1480; (2) add additional prohibited conduct for a program provider or instructor pursuant to Chapter 171, Texas Government Code; and (3) clarify rule language.

The proposed rules add new §90.95, Criminal Penalties, to affix Class A Misdemeanor criminal penalties to any unauthorized person who knowingly sells, transfers, issues, possesses or trades a certificate of program completion or certificate number. This change is pursuant to Texas Government Code, Chapter 171.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Costs - State and Local Governments

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs to state government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will an estimated reduction in costs to state government in that the proposed rules change the requirement for one license per program to one license per business or individual, with endorsements for each additional court-ordered program, and endorsements will be renewed concurrently with a license. These changes will result in less licensing entries and records, less renewal applications, and less background checks, which will only be performed for the license applications. The proposed rules will eliminate branch site locations, eliminating the processing of those initial and renewal applications. With the arrival of the opportunity for online courses, it is anticipated there will less of a need for physical site locations and less agency resources expended on oversight because of fewer locations.

It is estimated there will be a $15,000 reduction in costs to the State each year.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to local government as a result of enforcing or administering the proposed rules.

Revenues - State and Local Governments

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated loss in revenue to state government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will an estimated increase in revenue in that under the proposed rules, in addition to the revenue received from program provider fees, the Department will be receiving additional revenue from instructor licensing fees. Revenue from instructor license application fees is anticipated to be approximately $24,520 per year for the next five years. The estimated revenues of $80,980 from program provider application fees and $24,520 from instructor application fees totals $105,500 per year, which is $4,105 more than the current revenue average of $101,395.

It is estimated there will be a $4,105 increase in revenue to the State each year.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. Although the proposed rules make changes to the license types in court-ordered programs, the overall number of license holders in the industry, and the number of persons who may wish to obtain a license to operate in the industry, is not expected to change greatly, if at all. Therefore, the proposed rules will not have an impact on any local employment.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit, with the adoption of these proposed rules, will be to enhance the industry's ability to serve Texas citizens who require the industry's services with greater ease and will reduce burdens on the providers, instructors, and participants. The proposed rules allow for providers and instructors to conduct classes online. This new element will allow service to rural areas of the state by reducing burdens of travel time, travel costs, and by increasing ease of attendance and compliance with class completion requirements. Additionally, persons residing in urban areas, and those who have difficulty in attending in-person classes for other reasons, will also benefit from online classes and similar ease of class attendance.

Court-ordered program providers and instructors will also receive the benefits and flexibility of being able to provide online classes, and providers may be able to reduce their costs by providing courses online and thereby reducing the need for and cost of physical classroom space. Providers and instructors will also benefit from filing just one renewal application every two years, instead of multiple renewal applications when more than one program license is held.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there could be a reduction in anticipated economic costs to persons who are required to comply with the proposed rules. Under the proposed rules, each provider will need to obtain a provider license for the first program applied for, with an initial fee of $300. For each additional program, the provider chooses to offer, the endorsement fee is $280. However, program providers with branch locations are likely to realize increased savings in that they will not be required to obtain a separate license or certification with associated fees for each ancillary location. Those additional locations under the same ownership will operate under the initial license. Moreover, a program provider license can be renewed for a fee of $200, with no fee to renew endorsements. There was no increase in fees for an initial or renewal program provider license under the proposed rules.

Under the proposed rules, a program provider who holds a license in one of the programs may offer the course online. An endorsement must be obtained by the program provider for any ad-

ditional program offered online. In offering the court-ordered programs online, a program provider has statewide reach to provide services and can choose to avoid all the supplemental expenses associated with obtaining and maintaining traditional physical classroom locations, and thereby increase income potential.

No program provider will be required to pay more for a provider license than is currently being paid. With each additional program a program provider chooses to offer and obtains a license endorsement, the less that program provider will pay in total than previously for an equivalent number of licenses. Additionally, program providers will no longer need to pay a fee for an additional location where a course is offered. The more locations where a program provider offers a course, the less that program provider will pay in total than previously, especially if some of the additional locations are in non-adjacent counties to the program provider's primary location.

Any specific savings reduction cannot be reasonably estimated because it is affected by a few variables including the number of program providers with branch locations, individual business plans, and a program provider's choice of curriculum delivery to participants.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to some persons who are required to comply with the proposed rules. Currently, instructors are not required to pay an initial application or renewal fee to TDLR to obtain a license. However, under the new statute and proposed rules, instructor applicants must pay an application fee to obtain and renew an instructor license. Under the proposed rules, instructors will pay $50 fee for an initial license, and $45 endorsement fee each for any of the three additional programs the instructor chooses to instruct. The renewal fee for instructor licenses will be $40. However, there is no fee to renew endorsements.

The addition of these new instructor fees imposed by SB 1480 will result in additional costs each year for the first five years the proposed rules are in effect.

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

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

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

The proposed rules do have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exception for rules that are necessary to implement legislation under §2001.0045(c)(9). Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

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

4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules require an increase in fees paid to the agency by requiring fees to be paid for initial and renewal instructor applications, and decrease fees paid to the agency by making the fee for a subsequent provider endorsement less than the fee for a provider license, and removing the initial and renewal fees for additional locations where a course is offered.

5. The proposed rules do create a new regulation. The proposed rules create a new regulation by creating an instructor and provider licenses and creating endorsements to those licenses, and by authorizing programs to be provided online and creating requirements for providing programs online.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal an existing regulation by repealing provider, instructor, and branch site certifications.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §90.1, §90.10

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation

Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.1. Authority.

This chapter is promulgated under the authority of Occupations Code, Chapter 51; Government Code, Chapter 171; Alcoholic Beverage Code, §106.115 (Alcohol Education Program for Minors); Transportation Code, §§521.374 - 521.376 (Drug Offender Education Program); Code of Criminal Procedure, Chapter 42A, Articles 42A.403[~~, 42A.405,~~] and 42A.406 [~~(formerly Chapter 42, Article 42.12, §13(h))~~] (DWI Education Program); [~~and~~] Code of Criminal Procedure, Chapter 42A, Articles 42A.404[~~, 42A.405,~~] and 42A.406 [~~(formerly Chapter 42, Article 42.12, §13(j))~~] (DWI Intervention Program).

§90.10. Definitions.

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

(1) Alcohol Education Program for Minors--An alcohol educational program for minors as described in Section 171.0001, Government Code.

(2) Annual Reporting Period--The period of time beginning September 1 of each year and ending August 31 of the following year.

(3) Certificate of Program Completion (Certificate)--A uniform, serially numbered certificate as described in Section 171.0001, Government Code.

(4) Commission--The Texas Commission of Licensing and Regulation.

(5) Continuing Education Hour--At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug or alcohol-related topics, as applicable to the specific court-ordered program instructor license endorsement.

(6) Continuing Education Seminar--A department-approved continuing education seminar, class, or course that may be taken to meet renewal requirements, as applicable to a specific court-ordered program instructor license endorsement.

(7) Course Records--Court-ordered program participants' personal data forms, pre-tests and post-tests, self-assessments, screening instrument(s), homework assignments, action plans, and any other written material required or used in the court-ordered program class instruction.

(8) Course Roster--A form used to record data on all court-ordered program participants enrolled in the course and to record attendance data on those participants at each class throughout the course.

(9) Court-Ordered Education Class (Class)--A module of a court-ordered program course.

(10) Court-Ordered Education Course (Course)--The complete series of court-ordered program class modules.

(11) Court-Ordered Education Program (Program)--The Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(12) Court-Ordered Education Provider (Program Provider)--A person holding a license from the department to offer or provide a court-ordered program.

(13) Department--The Texas Department of Licensing and Regulation.

(14) Drug Offender Education Program--A drug offense educational program as described in Section 171.0001, Government Code.

(15) DWI--An offense relating to driving or operating a motorized vehicle while intoxicated, as described in Sections 49.04 - 49.08, Penal Code relating to Intoxication and Alcoholic Beverage Offenses.

(16) DWI Education Program--An educational program for intoxication offenses as described in Section 171.0001, Government Code.

(17) DWI Intervention Program--An intervention program for intoxication offenses described in Section 171.0001, Government Code.

(18) Endorsement--A classification received by a program provider or instructor as described in Sections 171.0103 and 171.0153, Government Code, after successful completion of the department licensing process, which allows a licensee to instruct, offer, or provide a specific type of court-ordered program.

(19) Executive Director--The executive director of the department.

(20) Instructor Applicant--A term describing an individual from the period when the individual applies for admission into an instructor training course until the point where a license is granted or denied.

(21) Instructor Licensing Period--The period of time beginning with the date instructor licensure was granted to instruct a specific court-ordered program curriculum and ending two years after the date the license was issued.

(22) Instructor Training Class--A module of an instructor training course.

(23) Instructor Training Course--The complete series of instructor training class modules.

(24) Minor--A person under the age of 21 years, as described in Section 106.01, Alcohol Beverage Code.

(25) Module--A part of the Court-Ordered Education Program Instructor Manual that covers a single subject or topic within a specific course.

(26) Online Course--A court-ordered education program that is offered or provided in a virtual, real-time, and interactive setting through an internet connection as authorized under this chapter.

(27) Participant--An individual who attends, takes, or completes a court-ordered program.

(28) Screening Instrument--A written device approved by the department and required to be administered to each program participant for the purpose of:

(A) identifying indicators of a potential substance abuse problem; and

(B) making recommendations for further evaluation, where indicated by the screening instrument.

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

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202059
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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16 TAC §90.10

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed repeal.

§90.10 Definitions.

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

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SUBCHAPTER B. INSTRUCTOR REQUIREMENTS

16 TAC §§90.20, 90.22 - 90.27

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed repeals.

§90.20 Instructor Certification Required.

§90.22. Instructor Certification - Instructor Training Course and Examination.

§90.23. Instructor Certification - Application.

§90.24. Instructor Certification Term; Renewals.

§90.25. Instructor Teaching and Continuing Education Requirements.

§90.26. Instructor Continuing Education Audits-All Programs.

§90.27. Instructor Responsibilities.

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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16 TAC §§90.20 - 90.28

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403,

42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.20. Instructor License Required.

(a) An individual who teaches any court-ordered program must have a current instructor license issued by the department, and the appropriate instructor license endorsement for the specific type of court-ordered program the individual is teaching.

(b) An instructor must instruct only for a program provider that holds an appropriate endorsement for the specific type of court-ordered program that the instructor is teaching.

(c) An instructor must utilize only the department-approved program curriculum for the specific type of program for which the instructor holds an appropriate license endorsement.

(d) An instructor must comply with all requirements of this chapter.

§90.21. Instructor License [~~Certification~~] - Eligibility Requirements.

(a) To be eligible for an instructor license and an endorsement in the [~~to become certified as an Instructor for a~~] DWI Education Program, Drug Offender Education Program, or Alcohol Education Program for Minors, an individual must:

(1) have a minimum of an associate [~~associate's~~] degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, or health[~~, or traffic safety~~];

(2) be a licensed chemical dependency counselor, registered counselor intern, licensed social worker, licensed professional counselor, licensed professional counselor intern, certified teacher, licensed psychologist, licensed physician or psychiatrist, probation or parole officer, adult or child protective services worker, licensed vocational nurse, or licensed registered nurse; or

(3) have at least one year of documented experience in case management or education relating to substance abuse and/or mental health.

(b) To be eligible for an instructor license and an endorsement in the [~~to become certified as an Instructor for a~~] DWI Intervention Program, an individual must:

(1) either:

(A) be a licensed chemical dependency counselor, registered counselor intern, licensed social worker, licensed professional counselor, licensed professional counselor intern, licensed psychologist, licensed physician or psychiatrist; or

(B) possess, at a minimum, an associate [~~associate's~~] degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, or health; and

(2) have a minimum of two years of documented experience providing direct client services directly related to the applicable internship, licensing, or education documented under subsection (a)(1) to persons with substance abuse problems or mental disorders.

§90.22. Instructor License - Application for License and First Endorsement.

(a) To apply for an instructor license and the first endorsement for a specific type of court-ordered program, an individual must:

(1) submit a completed application on a form prescribed by the department for the specific court-ordered program;

(2) submit proof of meeting the eligibility requirements under §90.21 for the specific court-ordered program;

(3) successfully pass a criminal history background check by the department; and

(4) submit the initial license application and first endorsement fee under §90.80.

(b) If the department determines that the instructor applicant has met the requirements under subsection (a), the instructor applicant may enroll in the department-approved instructor training course for the specific court-ordered program.

(c) Upon successful completion of the department-approved instructor training course, including testing and any retesting, and absent any other reasons for denial, the department shall issue the instructor applicant an instructor license and an endorsement for the specific court-ordered program.

(d) If an applicant fails to complete all licensure requirements within one year of the Department's receipt of the initial instructor license application, the applicant must reapply and pay any applicable fees.

§90.23. Instructor License - Instructor Training Course and Examination.

(a) To become an instructor for a specific type of court-ordered program, an individual must select and successfully complete the applicable department-approved instructor training course.

(b) An instructor applicant must pay the department's authorized representative an instructor training course fee after acceptance into the instructor training course.

(c) An instructor applicant must complete each class module of the instructor training course in its entirety.

(d) An instructor applicant must pass both the participant teaching presentation and the written exam to successfully complete the instructor training course.

(e) A passing score of 70 percent or above for the written exam and a "Pass" designation on the participant teaching presentation for the instructor training course is required for each instructor applicant.

(f) Any instructor applicant who does not pass the participant teaching presentation or the written exam at the instructor training course will have one additional opportunity to pass the written exam or participant teaching presentation, as applicable, within 30 days after the date of completing the instructor training course, or as otherwise directed by the department.

(g) If the instructor applicant does not pass the applicable written exam or participant teaching presentation the second time, the instructor applicant will not have successfully completed the instructor training course and must reapply for the applicable training and pay the applicable fee.

(h) Any instructor applicant who does not successfully complete the instructor training course, including any permitted retesting, will be required to return the curriculum manual to the department by no later than the end of the class module at which unsuccessful completion of the course is determined or at the time of retest, whichever is later.

§90.24. Instructor License - Additional Endorsements.

(a) An instructor who intends to instruct more than one type of court-ordered program must be licensed and must hold an endorsement for each type of court-ordered program.

(b) To obtain an endorsement to instruct an additional type of court-ordered program, the instructor must:

(1) successfully complete the application requirements under §90.22, except for §90.22(a)(4), for the specific court-ordered program;

(2) successfully complete the instructor training course and examination under §90.23 for the specific court-ordered program; and

(3) submit the additional endorsement fee under §90.80.

(c) Each endorsement will attach to the license and will be renewed as part of a successful renewal of the license.

§90.25. Instructor License Term; Renewals.

(a) An instructor license is valid for a two-year period beginning on the date of issuance of the initial license and may be renewed biennially. Each endorsement attached to the license will have the same term as the license.

(b) To renew an instructor license, the instructor must:

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

(2) complete the continuing education requirements for the specific court-ordered program curriculum specified under §90.26;

(3) comply with the continuing education audit process described under §90.27, if selected for an audit;

(4) successfully pass a criminal history background check performed by the department; and

(5) submit the instructor license renewal fee under §90.80.

(c) The department will issue a renewal license to an instructor meeting all the requirements for renewal.

(d) A person who fails to complete the renewal requirements before the instructor license expires will no longer hold a current license and may not instruct any court-ordered program. A person whose instructor license has expired may late renew the license in accordance with the procedures set out under §60.83.

(e) A person may not instruct any court-ordered program with an expired instructor license.

(f) The endorsement for the specific court-ordered program is attached to the license and will be renewed as part of a successful renewal of the license.

§90.26. Instructor Continuing Education Requirements.

(a) Drug Offender Education Instructor Requirements.

(1) Each Drug Offender Education instructor must complete at least one department-approved Drug Offender Education instructor continuing education seminar during each licensing period.

(2) If substantial changes or updates are made to the Drug Offender Education curriculum, instructors for Drug Offender Education must complete any additional department-approved Drug Offender Education instructor continuing education seminar(s) or special meeting(s) for additional instruction as required by the department.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education for the respective license that is directly drug-related in lieu of completing the department-approved continuing education seminar. If selected for a continuing education audit under §90.27, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-approved Drug Offender Education instructor continuing education seminar may be used to fulfill the continuing education requirement of another endorsement.

(b) Alcohol Education Program for Minors Instructor Requirements.

(1) Each Alcohol Education Program for Minors instructor must complete at least one department-approved Alcohol Education Program for Minors instructor continuing education seminar during each licensing period.

(2) If substantial changes or updates are made to the Alcohol Education Program for Minors curriculum, instructors for Alcohol Education Program for Minors must complete any additional department-approved Alcohol Education Program for Minors instructor continuing education seminar(s) or special meeting(s) for additional instruction as required by the department.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education for the respective license that is directly alcohol-related, in lieu of completing the department-approved continuing education seminar. If selected for a continuing education audit under §90.27, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-approved Alcohol Education Program for Minors instructor continuing education seminar may be used to fulfill the continuing education requirement of another program endorsement.

(c) DWI Education Instructor Requirements.

(1) Each DWI Education instructor must complete at least one department-approved DWI Education instructor continuing education seminar during each licensing period.

(2) If substantial changes or updates are made to the DWI Education curriculum, instructors for DWI Education must complete any additional department-approved DWI Education instructor continuing education seminar(s) or special meeting(s) for additional instruction as required by the department.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education for the respective license that is directly alcohol-related, in lieu of completing the department-approved continuing education seminar. If selected for a continuing education audit under §90.27, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-approved DWI Education Instructor continuing education seminar may be used to fulfill the continuing education requirement of another program endorsement.

(d) DWI Intervention Instructor Requirements.

(1) Each DWI Intervention instructor must complete at least one department-approved DWI Intervention instructor continuing education seminar during each licensing period.

(2) If substantial changes or updates are made to the DWI Intervention curriculum, instructors for DWI Intervention must complete any additional department-approved DWI Intervention instructor continuing education seminar(s) or special meeting(s) for additional instruction as required by the department.

(3) Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may complete 20 hours of continuing education for the respective license that is directly alcohol-related, in lieu of completing the department-approved continuing education seminar. If selected for a continuing education audit under §90.27, proof of these continuing education hours must be submitted to the department in a manner prescribed by the department.

(4) Continuing education hours obtained in a department-approved DWI Intervention instructor continuing education seminar may be used to fulfill the continuing education requirement of another program endorsement.

(e) An instructor must pay a continuing education seminar fee for each instructor endorsement to the department's authorized representative.

§90.27. Instructor Continuing Education Audits - All Programs.

(a) The department shall employ an audit system for continuing education reporting. The instructor is responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the instructor has been selected for audit.

(b) The audit process shall be as follows:

(1) The department shall select for audit a random sample of instructors for each renewal month. Instructors will be notified of the continuing education audit when they receive their renewal documentation;

(2) If selected for an audit, the instructor must submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the instructor's attendance, participation, and completion of the continuing education. All documentation must be provided at the time of renewal;

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the instructor;

(4) An instructor who is selected for a continuing education audit may renew through the online renewal process, if available. However, the instructor will not be considered renewed until the required continuing education documents are received, accepted, and approved by the department; and

(5) Instructors will not be renewed until the continuing education requirements have been met.

§90.28. Instructor Responsibilities.

(a) Instructors must report, in writing, any felony or misdemeanor conviction against themselves.

(b) An instructor must notify the department within 30 days of any change in the instructor's name, mailing address, telephone number, or e-mail address.

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER C. PROGRAM/PROVIDER CERTIFICATION REQUIREMENTS

16 TAC §§90.30 - 90.34

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed repeals.

§90.30. Program/Provider Certification Requirement.
§90.31. Program/Provider Certification Application - Headquarters.
§90.32. Program/Provider Certification Application - Branch Sites and Other Locations.
§90.33. Program/Provider Certification Term; Renewal.
§90.34 Program/Provider Certification - Change of Address and Providing Information.

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

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General Counsel

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SUBCHAPTER C. PROGRAM PROVIDER LICENSE [~~PROGRAM/PROVIDER CERTIFICATION~~] REQUIREMENTS

16 TAC §§90.30 - 90.34

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.30. Program Provider License Required.

(a) Any person seeking to offer or provide a specific type of a court-ordered program must have a current program provider license with an endorsement for the applicable program issued by the department.

(b) A person holding a current program provider license with the appropriate endorsement from the department is a licensed program provider for the applicable program.

(c) A program provider must ensure that:

(1) each court-ordered program is taught by an instructor with the appropriate endorsement to instruct that specific type of program;

(2) each court-ordered program is conducted in accordance with, and described in, the applicable and department-approved instructor manual under §90.40; and

(3) each court-ordered program utilizes the department-approved curriculum for the specific type of program being taught.

(d) A program provider must comply with all requirements of this chapter.

(e) A program provider may offer or provide a court-ordered program in person, online, or both, in accordance with the requirements in this chapter.

§90.31. Program Provider License - Application for License and Endorsements.

(a) A program provider license is required for each court-ordered program that is offered or provided. A license endorsement is required for each type of court-ordered program that is offered or provided by the program provider.

(b) To apply for a program provider license, a person must:

(1) submit a completed program provider application on a department-prescribed form;

(2) identify each court-ordered program that the program provider intends to offer or provide, and the instructor permitted to give instruction with their current license number and endorsement;

(3) indicate whether each court-ordered program will be offered to participants in person, as an online course, or both; and

(4) submit the program provider initial license application and first endorsement fee specified under §90.80.

(c) In addition to the requirements in subsection (b), an applicant for a program provider license offering or providing online instruction must identify each method that will be used to:

(1) deliver remote classroom instruction, including the platform, technology or program;

(2) track and verify participant attendance, including hours completed; and

(3) conduct pre-course and post-course testing, and exit interviews, if applicable.

(d) If an applicant has met all requirements for the specific type of court-ordered program, the department shall issue a license and endorsement for the specific type of program being offered or provided.

(e) If an applicant fails to complete all licensure requirements within one year of the Department's receipt of the initial program provider license and endorsement application, the applicant must reapply and pay the applicable fee.

§90.32. Program Provider License - Additional Endorsements.

(a) A program provider who intends to offer or provide more than one type of court-ordered program must be licensed and must hold an endorsement for each type of court-ordered program.

(b) To obtain an endorsement to offer or provide an additional type of court-ordered program, the program provider must:

(1) successfully complete the application requirements under §90.31, except §90.31(b)(4), for each additional court-ordered program;

(2) identify each additional court-ordered program that the program provider intends to offer or provide, and each instructor permitted to give instruction with their current license number and endorsement;

(3) indicate whether each additional court-ordered program will be offered to participants in person, or as an online course, or both; and

(4) submit the additional endorsement fee under §90.80 for each additional court-ordered program.

(c) Each endorsement will attach to the license and will be renewed as part of a successful renewal of the license.

§90.33. Program Provider License Term; Renewal.

(a) A program provider license is valid for a two-year period beginning on the date of issuance and may be renewed biennially. Each endorsement for a specific court-ordered program that is attached to the license has the same term as the license.

(b) To renew a program provider license, a program provider must submit:

(1) a completed program provider renewal application on a form prescribed by the department; and

(2) the program provider license renewal fee specified under §90.80.

(c) The department shall issue a program provider renewal license to a program provider meeting all the requirements for renewal.

(d) A person who fails to submit a complete renewal application and pay the renewal fee before the program provider license expires will no longer hold a current license to offer or provide the applicable court-ordered program. A person whose license has expired may late renew the license in accordance with the procedures set out under §60.83.

(e) A person must not offer or provide a court-ordered program with an expired program provider license.

(f) The endorsement for the specific court-ordered program is attached to the license and will be renewed as part of a successful renewal of the license.

§90.34. Program Provider License - Change of Address, Ownership and Other Information.

(a) A program provider must notify the department in writing within 30 days of any change in the program provider's address, telephone number, e-mail address, website address, or change in the registered agent, ownership or instructor.

(b) A change in ownership is considered to have occurred:

(1) in the case of ownership by an individual, when more than 50% of the licensed program provider has been sold or transferred;

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

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

(c) A program provider must maintain a registered agent in the State of Texas. A registered agent's address must not be used as a program provider's physical or mailing address.

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

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SUBCHAPTER D. PROGRAM REQUIREMENTS - CURRICULUM, COURSES, CLASSROOMS, CERTIFICATES

16 TAC §§90.40 - 90.49

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.40. Program Curriculum and Materials - All Programs.

(a) Court-ordered programs must [~~Offender Education Programs shall~~] use the most current [~~up-to-date~~] version of the uniform curricula and of any screening instrument approved by the department. The same curriculum and screening instruments are used for in-person and online court-ordered programs.

(b) The following curricula are approved for the applicable program:

(1) Alcohol Education Program for Minors -- the Alcohol Education Program for Minors Instructor [~~Administrator/Instructor~~] Manual;

(2) Drug Offender Education Program -- the Texas Drug Offender Education Program Instructor [~~Administrator/Instructor~~] Manual;

(3) DWI Education Program -- the Texas DWI Education Program Instructor [~~Administrator/Instructor~~] Manual; and

(4) DWI Intervention Program -- the Texas DWI Intervention Instructor [~~Administrator/Instructor~~] Program Manual.

(c) Any supplemental media used in a court-ordered program [~~an Offender Education Program~~] must have prior written approval from the department. The court-ordered program [~~Offender Education Program~~] seeking approval must demonstrate that it meets the following minimum conditions for approval of supplemental media:

(1) the instructor [~~Program~~] must still use all media required by the applicable approved curriculum for each module;

(2) the instructor [~~Program~~], with use of the supplemental media, must exceed the minimum number of classes and hours of instruction required per course by the length of any supplemental media; and

(3) the content of any supplemental media [~~medium~~] must relate directly to the objectives of the curriculum module in which it is used.

§90.41. Program Rules - Drug Offender Education Program.

(a) Pursuant to Transportation Code §521.374(a)(1), the department is responsible for approving a Drug Offender Education Program under rules adopted by the commission and the Texas Department of Public Safety (DPS).

(b) Pursuant to Transportation Code §521.375(a), the commission and DPS are responsible for jointly adopting rules for the qualification and approval of providers of the Drug Offender Education Program under §521.374(a)(1).

(c) For any proposed changes to the educational program rules for the Drug Offender Education Program, the department will notify the designated representatives from DPS and solicit input during the rulemaking process.

§90.42. General Program and Course Requirements - All Programs.

(a) Except where noted, the program and course requirements in this chapter apply to in-person and online court-ordered programs.

(b) All court-ordered programs must use the applicable curriculum approved under §90.40, including all required videos, slides or transparencies, participant workbooks, booklets, and other resources or written materials. The applicable curriculum must be presented in the prescribed manner and sequence.

(c) A single instructor must teach the entire course for all programs, except for DWI Intervention Programs, which may allow team-teaching utilizing no more than two instructors.

(d) Instructors must require participants to complete all class modules within a course in the proper sequence.

(e) The program provider must make provisions for persons unable to read and/or speak English. All classes in a single course must be taught in the same language.

(f) The instructor must screen each participant and offer appropriate referral information to the participant, based upon the numerical score and accompanying referral recommendations on the approved screening instrument required to be administered. The screening instrument must be administered by the instructor, or under the instructor's direct supervision.

(g) The program provider or instructor for each program must make available a current listing or roster of available chemical dependency counseling and treatment resources in the area to each participant whose numerical score and accompanying referral recommendations on the approved screening instrument indicate a potential substance abuse problem requiring further evaluation.

(h) All required registration, initial data collection, and administration of the screening instrument must be completed before commencement of the first class module.

(i) At the end of each course, the instructor for each program must administer a participant course evaluation.

(j) The instructor for all programs must conduct an exit interview with each participant, as outlined in the applicable educational program manual.

§90.43. Additional Course Requirements for the Drug Offender Education Program.

(a) In addition to the requirements under §90.42, each Drug Offender Education Program provider must:

(1) provide a minimum of 15 hours of class instruction per course;

(2) provide a minimum of five class modules of instruction per course;

(3) conduct class modules that are not longer than three hours in length, and not shorter than two hours in length;

(4) conduct no more than one class module per day; and

(5) conduct courses and each class with no more than 30 participants and with no fewer than three participants.

(b) The provider must administer and evaluate pre-course and post-course test instruments for each participant.

§90.44. Additional Course Requirements for the Alcohol Education Program for Minors.

(a) In addition to the requirements under §90.42, each Alcohol Education Program for Minors program provider must:

(1) provide a minimum of six hours of class instruction per course;

(2) conduct class modules which are not longer than three hours in length;

(3) conduct no more than one class module per day; and

(4) conduct courses and each class with no more than 30 participants and with no fewer than three participants (not including parents and guardians).

(b) The provider must administer and evaluate pre-course and post-course test instruments for each participant.

§90.45. Additional Course Requirements for the DWI Education Program.

(a) In addition to the requirements under §90.42, each DWI Education Program provider must:

(1) provide a minimum of 12 hours of instruction per course;

(2) provide no more than four hours of instruction in any one day; and

(3) conduct courses and each class with no more than 30 participants and with no fewer than three participants.

(b) The provider must administer and evaluate pre-course and post-course test instruments for each participant.

(c) Within ten working days after completion of the course, the instructor must notify the appropriate community supervision and corrections department and forward a copy of the certificate of completion to the Texas Department of Public Safety (DPS).

(d) If the deadline for completing the course is less than ten working days after the participant's successful completion of the course, the instructor, prior to the deadline, must:

(1) forward a copy of the certificate of completion to DPS; and

(2) notify the appropriate community supervision and corrections department or the court.

§90.46. Additional Course Requirements for DWI Intervention Programs.

(a) For purposes of this section, an individual session is defined as an individual meeting between instructor and participant in which the instructor checks the participant's workbook to monitor homework and student progress and assists with the participant's self-improvement techniques.

(b) In addition to the requirements under §90.42, each DWI Intervention Program provider must:

(1) provide a minimum of 30 hours of class instruction per course;

(2) conduct class modules which are not longer than three hours in length and not shorter than two hours in length;

(3) conduct no more than one class module per day;

(4) conduct no more than two class modules per week;

(5) conduct courses and each class with no more than 15 participants and with no fewer than three participants;

(6) provide make-up class modules for a maximum of two excused absences per participant; and

(7) conduct a minimum of two individual sessions with each participant and an individual exit interview with each participant.

(c) Within ten working days after completion of the course, the instructor must notify the appropriate community supervision and corrections department and forward a copy of the certificate of completion to Texas Department of Public Safety (DPS).

(d) If the deadline for completing the course is less than ten working days after the participant's successful completion of the course, the instructor, prior to the deadline, must:

(1) forward a copy of the certificate of completion to DPS; and

(2) notify the appropriate community supervision and corrections department or court.

§90.47. In-Person Classroom Facilities and Equipment.

(a) Court-ordered programs and instructors must conduct all in-person classes in appropriate classroom facilities and settings that comply with the Americans with Disabilities Act, 42 United States Code, §12101 et seq. The classrooms and setting must be conducive to study and must have:

(1) enough tables or desks to accommodate each participant without crowding;

(2) enough chairs sufficient to seat each participant;

(3) sufficient lighting;

(4) appropriate acoustics and climate control; and

(5) classroom facilities easily accessible to all class participants.

(b) Program providers and instructors must not conduct in-person class modules at a personal residence. Each instructor that instructs an in-person court-ordered program must be physically present in the classroom with the participants for each class.

(c) Audiovisual equipment must be in good working order and in good condition for use in class instruction.

(d) Television monitors and projection screens must be at least 25 inches diagonally and videos and slides/transparencies must be maintained in a high-quality condition.

(e) Slides/transparencies and videos must be displayed in a manner which produces a clear image and allows all participants to have an unobstructed view.

(f) Program providers and instructors must ensure that no portion of any court-ordered program course is videotaped or otherwise recorded or broadcast.

§90.48. Online Program Requirements.

(a) A program provider that offers or provides an online court-ordered program to participants must:

(1) ensure that it has access to internet service with sufficient bandwidth to successfully provide, without interruption to the participants, in such a manner that is conducive to instruction and comprehension;

(2) provide instructors with the proper equipment that is in good working order and that allows for virtual, real-time, and interactive presentation of all course materials; and

(3) confirm that all classes are instructed using current department-approved curriculum and materials, and that all classes are conducted in accordance with department rules and current laws.

(b) An instructor must ensure that the online classroom camera is clearly focused on the instructor at all times, and that all participants remain on their cameras throughout the entire class. Instructors and participants are allowed to be off camera during course break periods.

(c) An instructor must take the attendance of participants on the course roster and confirm audio and visual function of the participant's equipment from each participant before the start of each class. The instructor must not admit any participant into an online class if the participant does not have functioning audio and video capability on his or her equipment.

(d) A program provider must not enroll a participant into an online court-ordered program if the participant does not have compatible equipment that can allow the participant to take, attend, or complete the program.

(e) An instructor must remove any participant from class who fails to remain visible on the participant's camera and report the incident to the program provider at the end of the class. The program provider must record the incident in the course records. The instructor or the program provider must not present a certificate to any participant who fails to complete a court-ordered program.

(f) The online program provider is responsible for the administration of pre-course testing to participants, where applicable, and ensure the validity and security of post-course testing using the same or similar methods and procedures as would be used for in-person court-ordered programs.

§90.49. Certificate of Program Completion for Participants.

(a) A program provider must ensure that the instructor provides each participant who successfully completes the applicable court-ordered program a certificate of program completion prescribed by the department within five days of successful completion. If an exit interview is required, the program will not be deemed to be successfully completed and a certificate of program completion must not be issued until the exit interview has been conducted.

(b) A program provider that offers or provides a court-ordered program may provide the certificate to the participant by regular mail or present it to the participant after successful completion of the course. A program provider shall not provide a certificate to a participant by electronic means.

(c) Certificates shall only be issued by the department to the program provider. All program providers must maintain an ascending numerical accounting record of all issued and unissued certificates.

(d) The program provider is responsible for ensuring that an original certificate of program completion is issued to each participant who successfully completes a program. The program provider must retain one copy of the certificate in its records.

(e) Each program provider must develop procedures for issuing duplicate certificates.

(1) The procedures must ensure that the duplicate certificate is a new certificate, is clearly identified as being a duplicate of a previously issued certificate and includes the control number of the previously-issued certificate.

(2) The court-ordered program must indicate at the bottom of the course roster on which the participant's original control number was recorded that a duplicate certificate was issued and shall show the new control number and date of issuance for the duplicate certificate.

(f) If a program provider allows its license to expire or otherwise loses its license, it must, within 30 days after expiration or other termination of the license, return all unused certificates of program completion to the department.

(g) A program provider is responsible for the certificates in accordance with this subsection.

(1) A program provider may request the serially numbered certificates by submitting an order with the department's authorized vendor stating the number of certificates to be purchased and include payment of all appropriate fees.

(2) A program provider may not transfer unassigned certificates to a licensed program other than the licensed program for which the certificates were ordered.

(3) The program provider must maintain effective protective measures to ensure that unissued certificates are secure. The program provider must report all unaccounted-for certificates to the department within fifteen (15) working days of the discovery of the incident. In addition, the program provider must investigate the circumstances surrounding the unaccounted-for certificates. A report of the findings of the investigation, including preventative measures for recurrence, must be submitted to the department within thirty (30) days of the discovery.

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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STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed repeals.

§90.41. Program Curriculum and Rules - DWI Education Program.

§90.42. Program Rules - Drug Offender Education Program.

§90.43. General Program and Course Requirements - All Programs.

§90.44. Additional Course Requirements for the Drug Offender Education Program.

§90.45. Additional Course Requirements for the Alcohol Education Program for Minors.

§90.46. Additional Course Requirements for the DWI Education Program.

§90.47. Additional Course Requirements for DWI Intervention Programs.

§90.48. Classroom Facilities and Equipment.

§90.49. Course Completion Certificates for Participants.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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SUBCHAPTER E. PROGRAM REQUIREMENTS - ADMINISTRATION AND OTHER RESPONSIBILITIES

16 TAC §90.50

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed repeal.

§90.50. Program Administration.

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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Brad Bowman
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16 TAC §§90.50 - 90.54

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules

as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.50. Program Administration.

(a) Compliance. A program provider is responsible for all aspects of program compliance with this chapter, including any noncompliance related to the conduct of an instructor, owner, or other personnel.

(b) Course Fees and Schedules.

(1) A program provider must set definite and reasonable course fees. Course fees may not be assessed on a class-by-class basis.

(2) A program provider must maintain, and make available upon request, written course schedules that include the dates, times, and locations where courses will be held, and the fees charged by the program.

(c) Program Records and Audits.

(1) A program provider must maintain, for at least three years, documentation necessary to demonstrate compliance with all applicable requirements of this chapter. This requirement applies to records and documentation created on or after the effective date of this subsection.

(2) Upon request, the program provider must make available or provide to the department during business hours, any of its documents or records, unless otherwise prohibited by law.

(d) Referrals.

(1) If a program provider or instructor offers or provides court-ordered program referral information to an individual who is required to complete a court-ordered program, the program provider or instructor must:

(A) provide the department's phone number and website;

(B) advise the individual concerning the individual's choice to complete any court-ordered program or course approved by the department or use any program provider or instructor licensed by the department with the appropriate endorsement; and

(C) not require or otherwise attempt to influence an individual to choose a particular court-ordered program, course, provider or instructor.

(2) This subsection does not prevent a program provider or instructor from providing information about a specific court-ordered program, course, provider, or instructor when a prospective participant is specifically requesting information about that particular program, course, provider, or instructor.

(e) Complaint Procedures and Notice.

(1) A program provider must establish procedures to resolve participant complaints.

(2) A program provider must provide notice to participants that contains a statement that any complaints against the court-ordered program, program provider, instructor, or any of the program provider's personnel may be directed to the department. The notice must contain the following information: "Regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone: (512) 463-6599, Toll-Free (in Texas): (800) 803-9202, Relay Texas-TDD: (800) 735-2989, https://www.tdlr.texas.gov/complaints/".

§90.51. Recordkeeping Regarding Course Participants.

(a) All program providers [~~Offender Education Programs/Providers~~] must collect and maintain the following required information on each course participant:

(1) name;

(2) mailing [~~street~~] address, city, and zip code;

(3) e-mail address;

(4) date of birth;

(5) gender;

(6) driver's license number (if any);

(7) grade in school or educational level achieved;

(8) present employment;

(9) date of enrollment;

(10) date of course completion;

(11) dates and attendance record for each class module [~~session~~] of the course completed;

(12) certificate of completion number; and

(13) criminal case cause number.

(b) In addition to the requirements in subsection (a), program providers of the Drug Offender Education Programs and the DWI Education Programs must collect and maintain the following required information on each course participant:

(1) individual pre-course [~~pre-~~] and post-course test scores;

(2) average pre-course [~~pre-~~] and post-course test scores of course participants;

(3) aggregate percent of knowledge increase between pre-course [~~pre-~~] and post-course test scores;

(4) each course participant's screening instrument;

(5) each course participant's screening instrument indicator code/score; and

(6) any referral recommendations made to a course participant.

(c) In addition to the requirements in subsection (a), program providers of the DWI Intervention Programs must collect and maintain the following required information on each course participant:

(1) participants' blood alcohol concentration at time of arrest (if known);

(2) the number of prior alcohol/drug-related arrests;

(3) documentation that the agreement form, Alcoholics Anonymous attendance, family/significant other attendance, sessions with individual participants, and exit interview requirements were

completed as outlined in the Texas DWI Intervention Instructor [~~Administrator/Instructor~~] Program Manual;

(4) each course participant's screening instrument;

(5) each course participant's screening instrument indicator code/score; and

(6) any referral recommendations made to a course participant.

(d) In addition to the requirements in subsection (a), program providers of the Alcohol Education Program for Minors must collect and maintain the following required information on each course participant:

(1) the name of the referring judge;

(2) individual pre-course [~~pre-~~] and post-course test scores;

(3) average pre-course [~~pre-~~] and post-course test scores of course participants; and

(4) aggregate percent of knowledge increase between pre-course [~~pre-~~] and post-course test scores.

(e) A program provider [~~An Offender Education Program~~] must retain each course roster [~~Course Roster~~] and a copy of each issued certificate of program completion [~~Certificate of Completion~~] for at least three years from the date of course completion.

(f) All other course records [~~Course Records~~], as defined under §90.10 and specified in this section, must be retained for a minimum of one year from the date of course completion.

(g) The records in this section must be accessible by the program provider and made available upon request to the department [~~maintained at the Program's/Provider's headquarters~~].

§90.52. Annual Reports.

(a) A program provider [~~An Offender Education Program/Provider~~] must file an annual report for the [~~time~~] period beginning September 1 of each year and ending August 31 of the following year. The annual report form must be submitted to the department by September 15 of each year.

~~[(b) An Offender Education Program/Provider must submit the annual report form to the department by September 15 of each year.]~~

(b) [~~(c)~~] A program provider [~~An Offender Education Program~~] must submit the following items on the department-prescribed annual report form:

(1) total number of participants registered for each program [~~Program~~] course during the annual reporting period;

(2) total number of participants successfully completing each program [~~Program~~] course during the annual reporting period;

(3) total number of courses conducted during the annual reporting period;

(4) names of all instructors permitted to give instruction for the program provider [~~certified Instructors employed by the Offender Education Program~~] and number of courses conducted by each instructor [~~Instructor~~] during the annual reporting period;

(5) driver's license numbers of all participants, or, in the absence of a driver's license number, the date of birth of each participant completing the course;

(6) average percent of knowledge increase across all courses conducted during the annual reporting period from pre-course tests to post-course tests administered (not required for DWI Intervention Programs); and

(7) percent of total participants during the annual reporting period indicating significant substance abuse problems, based upon the numerical score on the approved screening instrument required to be administered (not required for Alcohol Education Program for Minors).

§90.53. Confidentiality.

All court-ordered programs must [~~Offender Education Programs shall~~] abide by and obtain any consent to disclosure required by applicable Federal and State laws regarding confidentiality of patient/client records including, as applicable and without limitation:

(1) 42 United States Code §290dd-2, Confidentiality of Records;

(2) 42 Code of Federal Regulations, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; and

(3) Health and Safety Code, Chapter 611, Mental Health Records.

§90.54. Discrimination Prohibited.

A program provider or instructor must not discriminate against participants based on [~~Offender Education Programs shall be conducted without discrimination based upon the~~] sex [~~gender~~], race, religion, age, national or ethnic origin, or disability [~~of the participant~~].

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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SUBCHAPTER F. FEES

16 TAC §90.80

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.80. Fees.

(a) All fees paid to the department and any charges for program-related materials are non-refundable.

(b) Fees will be assessed in accordance with the following fee schedule:

(1) Program Provider License [~~Offender Education Program/Provider Certification~~] Fees (paid to department):

(A) Initial license application and first endorsement fee[~~, including a new Program in a non-adjacent county to the headquarters~~]--$300[~~per Program~~];

(B) Additional endorsement fee--$280 per endorsement.

(C) Renewal application fee--$200[~~per Program~~];

(D) Reinstatement of endorsement fee--$280 per endorsement.

[~~(2) Branch Site Fees (paid to department):~~]

[~~(A) Initial application fee for a branch site (same or adjacent county to the headquarters)--$5 per branch site;~~]

[~~(B) Branch site renewal application fee--$5 per branch site;~~]

[~~(3) Moving/Change of Headquarters Fees (paid to department):~~]

[~~(A) Moving headquarters to a location outside of the county--$25;~~]

[~~(B) Moving headquarters to a location in the same county--$25;~~]

(2) [~~(4)~~] Instructor License [~~Certification~~] Fees:

(A) Initial license [~~initial~~] application and first endorsement fee--$50 [~~$0~~];

(B) Additional endorsement fee--$45 per endorsement;

(C) Renewal [~~renewal~~] application fee--$40 [~~$0~~];

(D) Reinstatement of endorsement fee--$45 per endorsement.

(3) [~~(5)~~] Instructor Training Course Fees (paid to the department's authorized representative, as directed by the department [~~third party contractor~~])--$425 per course;

(4) [~~(6)~~] Continuing Education Seminar Fees (paid to the department's authorized representative, as directed by the department [~~third party contractor~~])--$100 per endorsement [~~certification~~] per seminar; and

(5) [~~(7)~~] Fees for Program Course Materials must be paid to the department's authorized representative, as directed by the department [~~third party contractor~~].

(c) A duplicate/replacement fee for a license [~~certification/certificate~~] issued under this chapter is $25.

(d) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

(f) Late renewal fees for licenses issued under this chapter are provided under §60.83.

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

Filed with the Office of the Secretary of State on May 27, 2022.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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SUBCHAPTER G. ENFORCEMENT

16 TAC §§90.91 - 90.95

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 171, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Transportation Code, Chapter 521, §521.375, regarding the joint adoption of rules with the Department of Public Safety for the Drug Offender Education Program.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51; Texas Government Code, Chapter 171; Texas Alcoholic Beverage Code §106.115; Texas Transportation Code, §§521.371 - 521.377; Texas Code of Criminal Procedure, Articles 42A.403, 42A.404, 42A.406, 42A.407, 42A.514, and 45.051; and Texas Family Code §53.03 and §54.047. No other statutes, articles, or codes are affected by the proposed rules.

§90.91. Complaints; Investigations.

(a) Upon verbal or written request from the department, a program provider, instructor, [~~an Offender Education Program, Administrator, Instructor,~~] or any person associated with the program [~~Program~~], must cooperate with the department and furnish requested information concerning any department investigation of a complaint.

(b) If the department is investigating a complaint, the program provider [~~Program/Provider, its Administrator, and Instructors~~] must make available or provide to the department upon request at any reasonable time, any of its documents or records, including all records of any instructor or program provider, [~~Instructor or Administrator,~~] unless otherwise prohibited by law.

§90.92. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code Chapter 51, Texas Government Code, Chapter 171, the statutory provisions identified in §90.1, this chapter, [~~or~~] any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both [~~in accordance with the provisions of Texas Occupations Code, Chapter 51, the statutory provisions identified in §90.1, and any associated rules.~~]

§90.93. Enforcement Authority.

The enforcement authority granted under Texas Government Code, Chapter 171, Texas Occupations Code, Chapter 51, the statutory provisions identified in §90.1, and any associated rules may be used to enforce the statutory provisions identified in §90.1 and this chapter.

§90.94. Additional Conduct Subject to Disciplinary Actions.

(a) The department may deny, refuse to renew, or revoke the application or the license [~~certification~~] of a program provider or an instructor [~~an Offender Education Program or of an Instructor~~] if the applicant for program provider or instructor license [~~Program or Instructor certification~~], or the program provider or instructor [~~Program or Instructor certification holder~~], or a [~~Program owner, Instructor, Administrator, or~~] staff member:

(1) fails or has failed to comply with applicable requirements under this chapter or any other applicable statute or department rule, or an order of the commission or executive director;

(2) falsifies, submits or maintains, or has falsified, submitted, or maintained any substantially false, inaccurate, or incomplete documentation required under this chapter or related to the applicable court-ordered program [~~Offender Education Program~~]. This includes submission of any false or misleading statements in an application or other statement or correspondence to the department;

(3) engages or has engaged in conduct or promotes, permits, or has promoted or permitted one or more participants to engage in conduct inconsistent with behaviors and principles taught or advocated under the curriculum prescribed under §90.40;

(4) attends or has attended any instructor [~~Instructor~~] training, instructs or is present at any class in a court-ordered program, [~~an Offender Education Program,~~] or performs duties related to a court-ordered program [~~an Offender Education Program~~] while under the influence or impaired by alcohol or controlled substances, or provides one or more course participants with, or permits or encourages one or more course participants to use, any alcohol or controlled substance;

(5) permits or engages in misrepresentation, fraud, or deceit regarding a court-ordered program provided or instructed by a program provider or instructor;

(6) [~~(5)~~] engages or has engaged in conduct toward another that is violent or that constitutes abuse, neglect, or exploitation under applicable law; or

(7) [~~(6)~~] engages or has engaged in conduct with respect to a participant that is inequitable, discriminatory, degrading, disrespectful, retaliatory, of a romantic or sexual nature, or which otherwise is or may be harmful to the health, safety, or welfare of a participant, to participants generally, or to the public.

(b) If a person's initial application for provider or instructor license has been denied, or upon renewal, the license has been refused or the license revoked, a provider or instructor, upon reapplication for the license, must demonstrate that the reason(s) for the previous revocation, denial or refusal have been remedied.

~~[(b) If a Program/Provider or Instructor whose certification has been denied, initially or at renewal, or revoked thereafter reapplies, the Program/Provider or Instructor shall be required, with the application, to show that the facts and circumstances that led to revocation, denial, or a refusal to renew no longer serve as a basis for denial.]~~

§90.95. Criminal Penalties.

(a) Any person who knowingly sells, trades, issues, or otherwise transfers, or possesses with intent to sell, trade, issue, or otherwise transfer, a certificate or certificate number to a person not authorized to possess the certificate or certificate number is subject to criminal prosecution. The offense under this subsection is a Class A misdemeanor under Section 171.0356, Government Code.

(b) A person commits an offense if the person knowingly possesses a certificate or a certificate number that the person is not authorized to possess. The offense under this subsection is a Class A misdemeanor under Section 171.0357, Government Code.

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.27, concerning honesty, integrity and fair dealing. The purpose of the proposed amendment is to help clarify for veterinarians that we want to ensure that every single necessary procedure conducted on an animal, no matter how minor it appears or how major it is, must have the authorized consent of the owner.

John Hargis, General Counsel, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule. Mr. Hargis has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Mr. Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that every procedure conducted on an animal must have the authorized consent of the owner and that the licensees shall conduct their practice with honesty, integrity and fair dealing. This amendment to this rule makes more conduct inclusive in that minor necessary procedures are subject to the rule and any necessary procedures must be authorized by the animal's owner.

Mr. Hargis has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

According to Mr. Hargis, for the first five years that the rule would be in effect, it is estimated that the proposed rule would not create or eliminate a government program, implementation of the proposed rule would not require the creation of new employee

positions or the elimination of existing employee positions, implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency, the proposed rule would not require an increase in the fees paid to the agency, the proposed rule would not create a new regulation, the proposed rule would expand an existing regulation, the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability, and the proposed rule would not positively or adversely affect the state's economy.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Sarah Foran, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by email to *Sarah.Foran@veterinary.texas.gov.* Comments will be accepted for 30 days following publication in the *Texas Register.* **Comments must be received within 30 days after publication of this proposal in order to be considered.**

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medicine profession.

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

§573.27. Honesty, Integrity and Fair Dealing

Licensees shall conduct authorized and necessary medical procedurestheir ~~practice~~ with honesty, integrity, and fair dealing in their practice of veterinary medicine.

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

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John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
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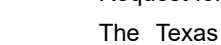

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.52

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.52, concerning Veterinarian Patient Record Keeping.

The purpose of the proposed amendment is to clarify what information is required for complete medical records.

Fiscal Note

John Hargis, General Counsel, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Hargis has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that licensees will have better clarity about the requirements of medical records and that the public will receive better medical records as a result.

Local Employment Impact Statement

Mr. Hargis has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Hargis has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Hargis has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that: the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase or decrease in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Sarah Foran, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by email to Sarah.Foran@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of §801.151(b), Occupations Code, which states that the Board

may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

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

§573.52. Veterinarian Patient Record Keeping

(a) A veterinarian performing a physical examination, diagnosis, treatment or surgery on an animal or group of animals shall prepare a written record or computer record concerning the animals containing, at a minimum, the following information [~~Individual records shall be maintained at the veterinarian's place of business, shall be complete, contemporaneous and legible and shall include, but are not limited to~~]:

(1) name, address, and telephone [~~phone~~] number of the owner [~~client~~];

(2) Identity of the animal, herd, or flock; [~~identification of patient, including name, species, breed, age, sex, and description;~~]

(3) Except for herds or flocks, the age, sex, color, and breed [~~patient history~~];

(4) Dates of examination, treatment and surgery [~~dates of visits~~];

(5) Brief history of the condition of each animal, litter, herd, or flock [~~any immunization records~~];

(6) Examination findings. If required for diagnosis or treatment and is not difficult to obtain: [~~weight if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;~~]

(A) Weight - actual or estimated;

(B) Temperature;

(C) Pulse;

(D) Respiration; and

(E) Any additional findings needed for diagnosis;

(7) Laboratory and radiographic tests performed and reports [~~temperature if required for diagnosis or treatment except when treating a herd, flock, or a species, or an individual animal that is difficult to obtain a temperature~~];

(8) Differential diagnosis; Referrals/consultations; to/with specialists and the clients response [~~any laboratory analysis~~];

(9) Procedures performed/treatment given and results [~~any diagnostic images or written summary of results if unable to save image~~];

(10) Drugs (and their dosages) administered, dispensed, or prescribed [~~differential diagnosis and/or treatment, if applicable~~];

(11) Surgical procedures shall include a description of the procedure, the name of the surgeon, the type of sedative/anesthetic agent used, the route of administration and the dosage; and [~~names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed. If a drug is approved by the United States Food and Drug Administration (FDA) in only one concentration and the veterinarian is administering the FDA-approved drug at the FDA-approved concentration, the veterinarian may omit recording the concentration of the drug administered;~~]

(12) Anesthesia monitoring performed during surgical procedures. [~~other details necessary to substantiate or document the examination, diagnosis, and treatment provided, and/or surgical procedure performed;~~]

[~~(13) any signed acknowledgment required by §§573.14, 573.16, 573.17, and 573.18 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation, Alternate Therapies--Acupuncture, Alternate Therapies--Holistic Medicine, and Alternate Therapies--Homeopathy);~~]

[~~(14) the identity of the veterinarian who performed or supervised the procedure recorded;~~]

[~~(15) any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation noted by indicating the time and date of the amendment, supplementation, change or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction;~~]

[~~(16) the date and substance of any referral recommendations, with reference to the response of the client;~~]

[~~(17) the date and substance of any consultation concerning a case with a specialist or other more qualified veterinarian; and~~]

[~~(18) copies of any official health documents issued for the animal.~~]

(b) Individual records must be maintained on each patient, except that records on livestock or litters of animals may be maintained on a per-client basis. Records pertaining to these animals may be kept in a daily log or billing records, provided that the treatment information is substantial enough to identify these animals and the medical care provided.

[~~(b) Maintenance of Patient Records.~~]

[~~(1) Patient records shall be current and readily available for a minimum of five years from the date of last treatment by the veterinarian.~~]

[~~(2) A veterinarian may destroy medical records that relate to any civil, criminal or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.~~]

[~~(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.~~]

[~~(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.~~]

[~~(5) If the veterinarian discontinues his or her practice, the veterinarian may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice consistent with §573.55 of this title (relating to Transfer and Disposal of Patient Records) and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.~~]

(c) Medical records and radiographs are the physical property of the hospital or the proprietor of the practice that prepared them. Records, including radiographs, must be maintained for a minimum of three years after the last visit.

[~~(c) When appropriate, veterinarians may substitute the words "herd", "flock" or other collective term in place of the word "patient" in subsections (a) and (b) of this section. Records to be maintained on these animals may be kept in a daily log, or the billing records, provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and Board rules.~~]

(d) Medical records shall be released upon request from a treating veterinarian with a legitimate interest, and shall be returned to the originating practice within a reasonable time if requested. Copies of records must be made available upon request from the owner of an animal at a reasonable cost to the owner and within a reasonable time. A veterinarian may not withhold the release of veterinary medical records for nonpayment of a professional fee.

(e) All regulated substances shall be recorded as required by federal and/or state regulations.

(f) Any signed acknowledgement required by §§573.14, 573.16 - 573.18 (relating to all complementary therapies).

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

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202072
John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 693-4500x3

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER F. DIABETES REGISTRY

25 TAC §61.91

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §61.91, concerning Diabetes Mellitus Glycosylated Hemoglobin Registry.

BACKGROUND AND PURPOSE

The purpose of the proposed repeal of §61.91 is necessary to implement Senate Bill (S.B.) 970, 87th Legislature, Regular Session, 2021, which repealed Texas Health and Safety Code, Chapter 95, Subchapter B, Diabetes Mellitus Registry. S.B. 970 removed the requirement for a diabetes registry.

The registry was established as a pilot program in accordance with House Bill (H.B.) 2132, 80th Legislature, Regular Session, 2007, and H.B. 1363, 81st Legislature, 2009. DSHS coordinated with the San Antonio Metropolitan Health District to establish the pilot registry.

S.B. 510, 82nd Legislature, Regular Session, 2011, amended Chapter 95 by adding Subchapter B, Diabetes Mellitus Registry, to make public health district participation in the diabetes mellitus registry voluntary and designated a public health district solely responsible for the cost of establishing and administering the registry program in their district. As a result, no data has been submitted since 2011.

SECTION-BY-SECTION SUMMARY

The repeal of §61.91 is proposed in its entirety to comply with S.B. 970, which eliminated the statutory requirement for a diabetes registry, thus making the rule no longer necessary.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed repeal will not affect the number of DSHS employee positions;

(3) implementation of the proposed repeal will result in no assumed change in future legislative appropriations;

(4) the proposed repeal will not affect fees paid to DSHS;

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

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

(7) the proposed repeal will decrease the number of individuals subject to the rule; and

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Under the proposed repeal there are no requirements to alter current business practices and there are no costs imposed.

LOCAL EMPLOYMENT IMPACT

The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner of DSHS Community Health Improvement Division, has determined that the public may benefit from the elimination of reporting responsibilities for the diabetes registry, which are currently voluntary and inconsistent.

Donna Sheppard has also determined that there are no anticipated economic costs to persons impacted by the proposed rule because the rule is being repealed with no associated cost.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to the Diabetes Prevention and Control Program at (512)776-2834. Written comments on the proposal may be submitted to the Diabetes Prevention and Control Program at P.O. Box 149347, Mail Code 1965, Austin, Texas 78714; 1100 W 49th Street, Mail Code 1965, Austin, Texas 78756; or by e-mail to diabetes@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R021" in the subject line.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules and policies necessary for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The repeal will implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapter 1001.

§61.91. Diabetes Mellitus Glycosylated Hemoglobin Registry.

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

Filed with the Office of the Secretary of State on May 23, 2022.

TRD-202202004
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 776-2834

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CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of Texas Administrative Code Title 25, Chapter 98, Subchapter A, §§98.1 - 98.13 and Subchapter C, Division 1, §§98.101 - 98.115, 98.117 - 98.119, and proposes new Subchapter C, Division 1, §§98.101 - 98.109, concerning the Texas HIV Medication Program (THMP).

BACKGROUND AND PURPOSE

The purpose of the proposal is to allow the THMP to comply with the findings and program improvement recommendations noted in the December 2019 program review conducted by the Health Resources and Services Administration (HRSA), the agency that provides federal funding, and the Medication Advisory Committee (MAC) recommendations.

The Texas Administrative Code, Title 25, Chapter 98 provides governing rules for the THMP, which provides medication for the treatment of HIV and its related complications for low-income Texans. Subchapter A establishes the Texas HIV State Pharmacy Assistance Program (SPAP). Subchapter C, Division 1 establishes the general provisions of THMP. DSHS proposes to repeal and replace Subchapter A and Subchapter C, Division 1 to update eligibility requirements for THMP.

SECTION-BY-SECTION SUMMARY

The proposed rules replace Subchapter A and Subchapter C, Division 1 with a consolidated set of rules in Subchapter C, Division 1. This will clarify insurance assistance that THMP may provide, replace a cumbersome program eligibility spenddown process with a universal standard deduction, and update language to be more reflective of current operations. These proposed changes will allow THMP to align with expectations from HRSA and allow all THMP programs to be accurately represented.

The new §§98.101 - 98.109 set forth the purpose, definitions, THMP eligibility criteria, specific program eligibility criteria, eligibility determination process, appeals process and exceptions, THMP benefits, limitations and cost containment, and nondiscrimination and confidentiality requirements for the THMP program.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal existing rules;

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

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect local economies.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Imelda Garcia, Associate Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a client-level income adjustment based on individual medication cost will be changed to a standard deduction that will more equitably adjust all clients' income by the average medication cost for all clients. Additionally, the rules were simplified to improve readability, including merging two subchapters into one subchapter in the Texas Administrative Code.

Donna Sheppard has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not change program requirements or eligibility requirements.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the TB/HIV/STD Section, P.O. Box 149347, Mail Code 1873, Austin, Texas 78714-9347; comments may be hand delivered to the TB/HIV/STD Section at 201 W. Howard Lane, Austin, Texas, or emailed to HIVSTD@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 21R050" in the subject line.

SUBCHAPTER A. TEXAS HIV STATE PHARMACY ASSISTANCE PROGRAM

25 TAC §§98.1 - 98.13

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Texas Health and Safety Code §85.016 authorizes the Executive Commissioner to adopt rules concerning Acquired Immune Deficiency Syndrome and Human Immundeficiency Virus Infection, including those governing the THMP.

The repeals will implement Texas Health and Safety Code, Chapter 85 and Texas Government Code, Chapter 531.

§98.1. Purpose.
§98.2. Definitions.
§98.3. Medication Coverage.
§98.4. Nondiscrimination.
§98.5. General Eligibility Criteria; Renewal.
§98.6. Denial, Non-Renewal, and Termination of Benefits.
§98.7. Applications.
§98.8. Application Process.
§98.9. Residency, and Residency Documentation, Requirements.
§98.10. Limitations and Benefits Provided.
§98.11. Provision of Service.
§98.12. Appeal Procedures and Exceptions.
§98.13. Confidentiality.

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

Filed with the Office of the Secretary of State on May 23, 2022.

TRD-202202005
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 10, 2022
For further information, please call: (737) 255-4599

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SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM

DIVISION 1. GENERAL PROVISIONS

25 TAC §§98.101 - 98.115, 98.117 - 98.119

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Texas Health and Safety Code §85.016 authorizes the Executive Commissioner to adopt rules concerning Acquired Immune Deficiency Syndrome and Human Immundeficiency Virus Infection, including those governing the THMP.

The repeals will implement Texas Health and Safety Code, Chapter 85 and Texas Government Code, Chapter 531.

§98.101. Purpose.
§98.102. Definitions.
§98.103. Medication Coverage.
§98.104. Nondiscrimination.
§98.105. Program Priority.
§98.106. General Eligibility Criteria.
§98.107. Medical Eligibility Criteria.
§98.108. Residency Eligibility Criteria.
§98.109. Financial Eligibility Criteria.
§98.110. Application Process; Verification; Renewal.
§98.111. Confidentiality.
§98.112. Program Distribution of Medications.

§98.113. Participating Pharmacies.
§98.114. Prescription Fees.
§98.115. Fiscal Planning.
§98.117. Denial, Non-Renewal, and Termination of Benefits.
§98.118. Appeal Procedures.
§98.119. Exceptions from Appeal Procedures.

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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Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 10, 2022
For further information, please call: (737) 255-4599

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25 TAC §§98.101 - 98.109

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. Texas Health and Safety Code §85.016 authorizes the Executive Commissioner to adopt rules concerning Acquired Immune Deficiency Syndrome and Human Immundeficiency Virus Infection, including those governing the THMP.

The new sections will implement Texas Health and Safety Code, Chapter 85 and Texas Government Code, Chapter 531.

§98.101. Purpose.

This subchapter establishes procedures and eligibility guidelines for programs under the Texas HIV Medication Program (THMP) as required in the Texas Health and Safety Code, §85.063.

(1) THMP operates in accordance with federal AIDS Drug Assistance Program legislation to assist low-income individuals living with HIV with direct medication assistance for medications on the program formulary or costs associated with eligible health insurance policies, including premiums and medication cost-sharing (deductibles, copayments, and coinsurance) and Medicare prescription drug plans.

(2) Program enrollment and services are subject to available funding.

§98.102. Definitions.

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

(1) Applicant--An individual who applies to the department for THMP services.

(2) Commissioner--The Commissioner of the Department of State Health Services.

(3) Department--The Department of State Health Services.

(4) Eligible health insurance policy--A state, federal, or private health insurance policy that is approved by the THMP and covers at least one drug from each class of HIV-antiretroviral medication and covers appropriate primary care services.

(5) Formulary--A list of drugs approved by the department that includes at least one drug from each class of HIV antiretroviral medications. https://www.dshs.texas.gov/hivstd/meds/files/formulary.pdf.

(6) Full-LIS--Full Low-income subsidy. The Social Security Administration provides full-LIS to applicants with income and assets below specified limits.

(7) HIV--Human immunodeficiency virus. Encompassing all stages of HIV, including HIV-related conditions and syndromes.

(8) Legally responsible person--A parent, managing conservator, or other person that is legally responsible for the support of a minor or a ward.

(9) Medicare prescription drug plan--A Medicare Part D prescription drug plan or the prescription drug component of a Medicare Part C Advantage Plan.

(10) Minor--A person who is younger than 18 years of age and who has not been emancipated by a court or who is not married or recognized as an adult by the state of Texas.

(11) Open enrollment--A time period during which one may freely enroll in or change one's selection of a health insurance plan or other benefit plan that is ordinarily subject to restrictions.

(12) Out-of-pocket costs--The premium, copay, coinsurance, and deductible amounts that an individual would be expected to pay when enrolled in a health insurance plan or Medicare prescription drug plan.

(13) Partial-LIS--Partial Low-income subsidy. The Social Security Administration provides partial-LIS to applicants with income and assets above the level of those qualifying for full-LIS, but still below specified limits.

(14) Payor of last resort--A funding source that may be used only after all other available public and private funding sources have been accessed.

(15) Qualifying event--A change of life circumstance that allows an individual to enroll in or change the selection of a health insurance plan or other benefit plan outside of open enrollment.

(16) SPAP--The State Pharmacy Assistance Program. The SPAP is available to low-income individuals living with HIV who also have Medicare Part D.

(17) Texas resident--An individual is considered a Texas resident if that person physically resides in Texas and intends to continue to reside within the state.

(18) THMP--The Texas HIV Medication Program, which includes the AIDS Drug Assistance Program (ADAP), SPAP, and TIAP.

(19) TIAP--Texas Insurance Assistance Program. TIAP provides premium and copay assistance with eligible health insurance policies.

§98.103. THMP Eligibility Criteria.

(a) The department shall give priority to participation in THMP to eligible women and infants and to individuals younger than 18 years of age as specified in 42 U.S.C. 300ff-21, and Texas Health and Safety Code §85.062.

(b) An individual is eligible to participate in THMP if the individual meets the following eligibility criteria:

(1) provides proof of diagnosis of HIV;

(2) is under the care of a physician, physician's assistant, or advanced practice nurse licensed to practice in the United States;

(3) is a Texas resident; and

(4) is at or below 200% of the federal poverty level and meets the financial eligibility criteria established by THMP Policy 220.001 https://www.dshs.texas.gov/hivstd/policy/policies/220-001.shtm; and:

(A) is not covered for approved THMP medications under the Texas Medicaid Program, or has exhausted Medicaid pharmacy benefits for the given month;

(B) does not qualify for assistance, receives less than full coverage, or needs assistance with out-of-pocket costs for approved THMP medications under any state compensation program, qualifying private health insurance policy, or under any other state or federal health benefits program;

(C) meets THMP's payor of last resort criteria that is in accordance with state law, department policy, and corresponding federal grant conditions, in which Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87) (RWHAP) or State Services funds cannot be used as a payment source for any service that can be paid for or charged to any other billable source, and providers are expected to make reasonable efforts to secure other funding instead of RWHAP Part B or State Services funding, whenever possible; and

(D) has an annual income that meets guidance as determined by:

(i) an applicant's annual gross income (if single), or the combined annual gross income of the applicant and the applicant's spouse, minus a standard deduction applied in accordance with program policy;

(ii) for a minor child, the (combined) annual gross income of the child's parent or parents, minus a standard deduction, and only the income of the parent or parents living in the same household as the child at the time of application or renewal is used to determine financial eligibility; and

(iii) for an emancipated minor, financial eligibility is determined as set forth in this paragraph.

§98.104. Specific Program Eligibility Criteria.

(a) AIDS Drug Assistance Program (ADAP). In addition to §98.103 of this title (relating to THMP Eligibility Criteria), an individual must attest that the individual is not enrolled in any state, federal, or private health insurance policies or benefits programs that cover the individual's currently prescribed medications that are on the THMP formulary.

(b) SPAP. In addition to §98.103 of this title, an individual must be enrolled in a Medicare prescription drug plan that covers the individual's current medications that are on the formulary and apply for low-income subsidy (LIS) assistance. Those approved with full-LIS are disenrolled from the SPAP program, while those with partial-LIS and who are denied LIS remain eligible for participation in SPAP. (Information on Medicare eligibility, Medicare prescription drug plans, and LIS assistance can be found at http://www.medicare.gov.)

(c) TIAP. In addition to §98.103 of this title, an individual must be enrolled in an eligible health insurance policy that covers the individual's current medications on the formulary, as updated. An applicant may be screened for TIAP during open enrollment or when the applicant has experienced a qualifying event.

§98.105. Eligibility Determination Process.

(a) New applicants to THMP. An individual meeting the eligibility requirements must submit a complete application for benefits to THMP, in the format specified by THMP, certifying that the statements made within the application are factual and true, submitted as instructed, and accompanied by the required supporting documentation. To request an application packet, please follow current procedures on THMP's webpage found at www.dshs.texas.gov/hivstd/meds.

(b) Renewals. An individual must renew enrollment in THMP according to the procedures established by THMP. An individual must demonstrate continuing eligibility using THMP's renewal application and comply with all associated deadlines and requirements for accompanying documents.

(c) Eligibility Determination.

(1) Approved. If approved, the applicant is eligible for THMP services.

(2) Incomplete. Any application that does not meet all requirements of this section is considered incomplete. Incomplete applications are not processed further, and the applicant is contacted concerning the insufficiency of the application.

(3) Pending. THMP may, at the time of application and at any time during enrollment, verify the eligibility status of an enrolled individual to determine if the individual is continuing to meet the eligibility criteria of THMP. The individual must furnish requested documentation to THMP as directed. Until this is completed, the status of enrollment is considered pending.

(4) Denial, non-renewal, and termination of benefits. An individual may be denied enrollment, be denied renewal, or have enrollment in THMP terminated for any of the following reasons:

(A) failure to maintain Texas residency or, upon request, furnish evidence of such;

(B) failure to continue to meet income requirements for eligibility or to provide income data as requested, as THMP shall periodically verify the financial status of an enrolled individual to determine if the individual continues to meet financial eligibility criteria;

(C) failure to initially meet or continue to meet the medical requirements for eligibility;

(D) become eligible for the full-LIS under Medicare Part D;

(E) become incarcerated in a city, county, state, or federal jail or prison, in accordance with Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87), Health Resources and Services Administration (HRSA) Policy Clarification Notice (PCN) #18-02, and Texas Code of Criminal Procedure Article §104.002(a);

(F) admitted or committed to a Texas state hospital or state supported living facility;

(G) determined by THMP that the individual has made a material misstatement or misrepresentation on the individual's application or any document required to support the individual's application or renewal, or on submissions made to comply with subsection (a) or (b) of this section;

(H) failure to notify THMP of changes to permanent home address or insurance coverage;

(I) notified THMP in writing that the individual no longer wants to receive THMP benefits;

(J) failure to request or use services during any period of six consecutive months; or

(K) exhausted THMP program funds.

(d) Denial, modification, suspension, or termination of services. An applicant or individual is governed by the procedures required by §98.106 of this title (relating to Appeal Process and Exceptions).

§98.106. Appeals Process and Exceptions.

(a) An individual whose application is denied or whose services have been terminated by THMP may appeal the department's decision within 60 days of postmark of the notification. An applicant, individual, or person legally responsible for an applicant or individual may initiate the appeal process by notifying the department's HIV/STD Prevention and Care Unit that the individual wishes to dispute the department's decision. The written notice must contain all arguments and supporting documents being put forward for the appeal. The notice should be addressed to the Department of State Health Services, HIV/STD Prevention and Care Unit, Texas HIV Medication Program, Attn: MSJA, Mail Code 1873, P.O. Box 149347, Austin, Texas 78714-3947 or in another manner allowed by the department.

(b) A department review panel will hear the appeal within 30 days of receipt of the written notice. The appellant will be notified by mail of the appeal. The panel shall consist of:

(1) the TB/HIV/STD Section Director;

(2) the HIV/STD Prevention and Care Unit Manager;

(3) the Texas HIV Medication Program Manager; and

(4) the Infectious Disease Medical Officer (or equivalent positions, in the event of a department reorganization).

(c) The appellant may present the case in person or in another manner allowed by the department before the panel or rely on the written submissions. The issues on appeal and the arguments in support of those issues are limited to those already submitted in writing. Following review of the materials, and hearing from the appellant (if applicable), the panel will issue a written decision within 60 days of the hearing. The panel's decision shall be final for the eligibility determination that is appealed. The appellant may reapply to the program at any time in the future.

(d) The department is not required to offer an opportunity to dispute the decision to deny, non-renew, or terminate if THMP's actions are the result of the exhaustion of THMP program funds.

§98.107. THMP Benefits.

THMP provides drugs at the best price available, including purchasing health insurance if the criteria are met, and THMP participates in the 340B Drug Pricing Program to ensure program medications are available at the best price.

(1) AIDS Drug Assistance Program (ADAP) Medication Coverage.

(A) The medications provided under ADAP are listed on the THMP formulary, found at https://www.dshs.texas.gov/hivstd/meds/files/formulary.pdf.

(B) THMP does not approve the dispensing of ADAP medications in excess of a 90-day supply, or full bottle increments, whichever is greater. The program may also dispense medications in 30-day or 60-day supplies.

(C) Prescribers must attest that certain medications meet specific prescribing requirements, including lab testing, before requesting these medications from THMP. These requirements are outlined in the THMP formulary found at www.dshs.texas.gov/hivstd/meds/document.shtm.

(D) The department may contract with a pharmaceutical wholesaler for purchase of drugs. The department distributes drugs to pharmacies participating in ADAP and to a mail order pharmaceutical distributor for the dispensing of drugs directly to individuals who reside outside areas covered by participating pharmacies.

(E) The department delivers services directly or through external pharmacies approved by THMP that have signed a Memorandum of Agreement with the department.

(F) A dispensing fee may be collected from the department by a participating pharmacy for each prescription dispensed in accordance with the existing Memorandum of Agreement with the department. Eligible individuals shall not be charged any dispensing fees directly by a participating pharmacy.

(2) SPAP and TIAP Medication Coverage.

(A) The department may contract with a claims processor to interface with plans that provide eligible health insurance plans on behalf of the programs.

(B) Benefits payable by THMP:

(i) Eligible health insurance policy out-of-pocket expenses, which include deductibles, copays, and coinsurance amounts.

(ii) THMP may assist eligible individuals in obtaining public or private health insurance by providing insurance premium payment assistance to the insurance company, and if paying for such health insurance, it can reasonably be expected to be cost effective for THMP.

§98.108. Limitations and Cost Containment.

(a) In the event of a statewide emergency declared by the Governor, THMP may temporarily adjust program operations to ensure that mission critical functions continue. These cost containment measures will be approved by the Commissioner in writing.

(b) THMP funds must be used as payor of last resort and coordinated with other local, state, and federal funds, including Medicaid and Medicare.

(1) To ensure THMP's expenditures do not exceed the budget, the department analyzes the latest actuarial projections for the upcoming year, including the average annual cost per individual and the projected number of individuals THMP will be able to serve using current budget figures. The department performs this analysis of THMP expenditures every quarter to determine if funds are sufficient to meet projected expenditures.

(2) To make certain that expenditures do not exceed the program's budget, the department may implement the following temporary cost-containment measures as necessary.

(c) If budgetary limitations exist, this information will be shared with stakeholders as soon as possible. The department has discretion to:

(1) Restrict or prioritize covered services based upon:

(A) medical necessity;

(B) other third-party eligibility and projected third party payments for the different treatment modalities; or

(C) caseloads and demands for services based on current or projected data.

(2) Discontinue use of the standard deduction adjusting the applicant's gross annual income described in §98.103(b)(4)(D) of this title (relating to THMP Eligibility Criteria).

(3) Lower the financial eligibility criteria established by THMP policy 220.001 https://www.dshs.texas.gov/hivstd/policy/policies/220-001.shtm to a level that is not lower than 125% of federal poverty level.

(4) Change covered services by adding or deleting specific services or entire categories, making changes proportionally across a category or categories, using a combination of these methods, or establishing a waiting list of eligible applicants.

(d) As funds become available, the department will rescind the cost-containment measures in a manner which the department judges most appropriate given the circumstances at that time.

§98.109. Nondiscrimination and Confidentiality.

(a) Nondiscrimination. The department operates the THMP in a manner that allows full participation of individuals, regardless of their race, color, national origin, age, or disability. For purposes of THMP, discrimination based on gender or sexual orientation is prohibited.

(b) Confidentiality. No information that could identify an individual applicant is released except as authorized by law and in accordance with §1.501 of this title (relating to Privacy of Health Information under the Health Insurance Portability and Accountability Act of 1996). An applicant is advised that, in addition to the department, the physicians, pharmacists, and designated Medicare prescription drug plan will be aware of the applicant's diagnosis.

(c) Disclose. The department may use or disclose individual health information to provide, coordinate, or manage health care or related services, as allowed by law. This includes referring the individual to other health care resources. The department may contact a THMP applicant or individual to discuss enrollment benefits, resources for treatment, or other health-related information as appropriate.

(d) Privacy notice. An individual may request a copy of the department's privacy notice by contacting the THMP.

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

Filed with the Office of the Secretary of State on May 23, 2022.

TRD-202202007
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 10, 2022
For further information, please call: (737) 255-4599

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CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.11

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §157.11, concerning the Requirements for an EMS Provider License.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment to §157.11 is necessary to comply with Senate Bill (S.B.) 1876, 87th Legislature, Regular Session, 2021, which amended Texas Health and Safety Code §773.112, relating to the emergency transfer of a dialysis patient during a declared disaster. S.B. 1876 requires each emergency medical services (EMS) provider's medical director to approve a protocol to give preference to the emergency transfer of a dialysis patient during a declared disaster.

The amendment was reviewed by the Governor's EMS and Trauma Advisory Council (GETAC), as required by Texas Health and Safety Code §773.012, in public meetings held on November 22, 2021, and February 7, 2022. No comments were received from the advisory council.

SECTION-BY-SECTION SUMMARY

The proposed amendment provides language to §157.11(c)(7)(N) to reference Health and Safety Code §773.112(d). The amendment is based on S.B. 1876, which states that rules shall require that each applicable EMS medical director approve protocols that give preference to the emergency transfer of a dialysis patient from the patient's location directly to an outpatient end-stage renal disease facility during a declared disaster.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the amendment will not affect the number of DSHS employee positions;

(3) implementation of the amendment will result in no assumed change in future legislative appropriations;

(4) the proposed amendment will not affect fees paid to DSHS;

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

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

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

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

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

Donna Sheppard has also determined that there will be no adverse economic effects on small businesses, micro-businesses, or rural communities. Under the proposed amendment, there are no requirements to alter current business practices and there are no new fees or costs imposed.

LOCAL EMPLOYMENT IMPACT

The proposed amendment will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Timothy Stevenson, DVM, Ph.D., Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect dialysis patients will benefit from the EMS provider's planning for the dialysis patients' emergency transfer during a declared disaster.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Jorie Klein, MSN, MHA, BSN, RN, by P.O. Box 149347, Austin, Texas 78714-9347, or street address 1100 West 49th Street, Austin, Texas 78751; or emailed to EMSInfo@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R022" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services of the health and human services agencies; Texas Health and Safety Code, Chapter 773, Emergency Health Care Act, which allows DSHS to promulgate rules for the transfer of dialysis patients during a declared disaster; and Texas Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code, Chapter 1001.

The amendment will implement Texas Government Code, Chapter 531, and Texas Health and Safety Code, Chapters 773 and 1001.

§157.11. Requirements for an EMS Provider License.

(a) Purpose: Acquiring, issuing, and maintaining an EMS Providers License.

(b) EMS in Texas is a delegated practice, as written in Occupations Code, §157.003.

(c) Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) An applicant for an initial EMS provider license shall submit a completed application to the department on the required official forms, following the department's written process.

(2) The nonrefundable application fee of $500 per provider plus $180 for each EMS vehicle to be operated under the license shall accompany the application.

(3) The department will process the EMS provider license application as per §157.3 of this title (relating to Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensure).

(4) An EMS provider holding a valid license or authorization from another state; whose service area adjoins the State of Texas; who has in place a written mutual aid agreement, with a licensed Texas EMS provider, and who when requested to do so by a licensed Texas EMS provider, responds into Texas for emergency mutual aid assistance, may be exempt from holding a Texas EMS provider license, but will be obligated to perform to the same medical standards of care required of EMS providers licensed by their home state.

(5) A fixed-wing or rotor-wing air ambulance provider, appropriately licensed by the state governments of New Mexico, Oklahoma, Arkansas, Kansas, Colorado or Louisiana may apply for a reciprocal issuance of a provider license, and the application would not require staffing by Texas EMS certified or licensed personnel. A nonrefundable administrative fee of $500 per provider in addition to a nonrefundable fee of $180 for each EMS aircraft to be operated in Texas under the reciprocal license shall accompany the application.

(6) An applicant for an EMS provider license that provides emergency prehospital care is exempt from payment of department licensing and authorization fees if the firm is staffed with at least 75% volunteer personnel, has no more than five full-time staff or equivalent, and the firm is recognized as a §501(c)(3) nonprofit corporation by the Internal Revenue Service. An EMS provider who compensates a physician to provide medical supervision may be exempt from the payment of department licensing and authorization fees if all other requirements for fee exemption are met.

(7) Required documents that shall accompany a license application.

(A) Document verifying volunteer status, if applicable.

(B) Map and description of service area, a list of counties and cities in which applicant proposes to provide primary emergency service and a list of all station locations with address and telephone and facsimile transmission numbers for each station.

(C) Declaration of organization type and profit status.

(D) Declaration of Provider Name.

(i) The legal name of the EMS provider cannot include the name of the city, county or regional advisory council within or in part, unless written approval is given by the individual city, county or regional advisory council respectively.

(ii) The EMS provider operational name cannot include the name of the city, county or regional advisory council within or in part, unless written approval is given by the individual city, county or regional advisory council respectively. A proposed provider name is deemed to be deceptively similar to an established licensed EMS

provider if it meets the conditions listed in the Office of the Secretary of State rule, 1 Texas Administrative Code, §79.39 (relating to Deceptively Similar Name).

(E) Declaration of Ownership.

(F) Declaration of the address for the main location of the business, normal business hours and provide proof of ownership or lease of such location.

(i) The normal business hours must be posted for public viewing.

(ii) A service area map must be provided.

(iii) Only one EMS provider license will be issued to each fixed address.

(iv) The applicant shall attest that no other license EMS provider is at the provided business location or address.

(v) The emergency medical services provider must remain in the same physical location for the period of licensure, unless the department approves a change in location.

(G) Declaration of the administrator of record and any subsequently filed declaration of a new administrator shall declare the following, if the EMS provider is required to have an administrator of record as per Health and Safety Code, §773.0571 or §773.05712.

(i) The administrator of record is not employed or otherwise compensated by another private for-profit EMS provider.

(ii) The administrator of record meets the qualifications required for an emergency medical technician certification or other health care professional license with a direct relationship to EMS and currently holds such certification or license issued by the State of Texas.

(iii) The administrator of record has submitted to a criminal history record check at the applicant's expense as directed in §157.37 of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds).

(iv) The administrator of record has completed an initial education course approved by the department regarding state and federal laws and rules that affect EMS in the following areas:

(I) Health and Safety Code, Chapter 773 and 25 Texas Administrative Code, Chapter 157;

(II) EMS dispatch processes;

(III) EMS billing processes;

(IV) Medical control accountability; and

(V) Quality improvement processes for EMS operations.

(v) The applicant will assure that its administrator of record shall annually complete eight hours of continuing education related to the Texas and federal laws and rules related to EMS.

(vi) An EMS provider that is directly operated by a governmental entity, is exempt from this subparagraph, except for declaration of administrator of record.

(vii) An EMS provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing EMS, the administrator of record is exempt from clauses (ii) and (iv) of this subparagraph.

(H) Copies of Doing Business Under Assumed Name Certificates (DBA).

(I) Completed EMS Personnel Form.

(J) Staffing Plan that describes how the EMS provider provides continuous coverage for the service area defined in documents submitted with the EMS provider application. The EMS provider shall have a staffing plan that addresses coverage of the service area or shall have a formal system to manage communication when not providing services after normal business hours.

(K) Completed EMS Vehicle Form.

(L) Declaration of an employed medical director and a copy of the signed contract or agreement with a physician who is currently licensed in the State of Texas, in good standing with the Texas Medical Board, in compliance with Texas Medical Board rules, 22 Texas Administrative Code, Chapter 197, and in compliance with Title 3 of the Texas Occupations Code.

(M) Completed Medical Director Information Form.

(N) Treatment and Transport Protocols and policies addressing the care to be provided to adult, pediatric, and neonatal patients, and as stated in Health and Safety Code §773.112(d), must be approved and signed by the medical director.

(O) A list of equipment as required on the EMS Provider initial and renewal application, with identifiable or legible serial numbers, supplies and medications; approved and signed by the medical director.

(P) The applicant shall attest that all required equipment is permitted to be used by the EMS provider and provide proof of ownership or hold a long-term lease for all equipment necessary for the safe operation.

(Q) The applicant shall attest that each authorized vehicle will have its own set of equipment required for each authorized vehicle to operate at the level of the service for which the provider is authorized.

(R) Description of how the EMS provider will conduct quality assurance in coordination with the EMS provider medical director.

(S) The applicant shall provide an attestation or provide documentation that it and/or its management staff will or continues to participate in the local regional advisory council.

(T) Plan for how the provider will respond to disaster incidents including mass casualty situations in coordination with local and regional plans.

(U) Copies of written Mutual Aid and/or Inter-local Agreements with EMS providers.

(V) Documentation as required for subscription or membership program, if applicable.

(W) Certificate of Insurance, provided by the insurer, identifying the department as the certificate holder and indicating at least minimum motor vehicle liability coverage for each vehicle to be operated and professional liability coverage. If applicant is a government subdivision, submit evidence of financial responsibility by self-insuring to the limit imposed by the tort claims provisions of the Texas Civil Practice and Remedies Code.

(i) The applicant shall maintain motor vehicle liability insurance as required under the Texas Transportation Code.

(ii) The applicant shall maintain professional liability insurance coverage in the minimum amount of $500,000 per occurrence, or as necessary per state law, with a company licensed or deemed

eligible by the Texas Department of Insurance to do business in Texas or acceptable proof of self-insurance or captive insurance in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient.

(X) The applicant shall provide copies of vehicle titles, vehicle lease agreements, copies of exempt registrations if applicant is a government subdivision, or an affidavit identifying applicant as the owner, lessee, or authorized operator for each vehicle to be operated under the license.

(Y) The applicant shall provide documentation of the following, showing that the applicant, including its management staff possesses sufficient professional experience and qualifications related to EMS:

(i) an attestation that its management staff have read the Texas Emergency Healthcare Act and the department's EMS rules in this chapter;

(ii) proof of one year experience or education provided by a nationally recognized organization on emergency medical dispatch processes;

(iii) proof of one year experience or education provided by a nationally recognized organization concerning EMS billing processes;

(iv) proof of one year experience or education provided by a nationally recognized organization on medical control accountability; and

(v) proof of one year experience or education provided by a nationally recognized organization on quality improvement processes for EMS operations.

(Z) A copy of a letter of credit for the obtaining or renewing of an EMS Providers license, issued by a federally insured bank or savings institution:

(i) in the amount of $100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(ii) in the amount of $75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(iii) in the amount of $50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued;

(iv) in the amount of $25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(v) that shall include the names of all of the parties involved in the transaction;

(vi) that shall include the names of the persons or entity, who owns the EMS provider operation and to whom the bank is issuing the letter of credit;

(vii) that shall include the name of the person or entity, receiving the letter of credit; and

(viii) an EMS provider that is directly operated by a governmental entity is exempt from this subsection.

(AA) A copy of the surety bond in the amount of $50,000 issued to and provided to the Health and Human Services Commission by the applicant, participating in the medical assistance program operated under Human Resources Code, Chapter 32, the Medicaid managed care program operated under Government Code, Chapter 533, or the child health plan program operated under Health and Safety Code, Chapter 62. An EMS provider that is directly operated by a governmental entity is exempt from this subparagraph.

(BB) Documentation evidencing applicant or management team has not been excluded from participation in the state Medicaid program.

(CC) A copy of a governmental entity letter of approval that shall:

(i) be from the governing body of the municipality in which the applicant is located and is applying to provide EMS;

(ii) be from the commissioner's court of the county in which the applicant is located and is applying to provide EMS, if the applicant is not located in a municipality;

(iii) include the attestation that the addition of another licensed EMS provider will not interfere with or adversely affect the provision of EMS by the licensed EMS providers operating in the municipality or county;

(iv) include the attestation that the addition of another licensed EMS provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed EMS providers operating in the municipality or county; and

(v) include the attestation that the addition of another licensed EMS provider will not cause an oversupply of licensed EMS providers in the municipality or county.

(8) Paragraph (7)(CC) of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(9) An EMS provider is prohibited from expanding operations to or stationing any EMS vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this subsection until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(A) a contract awarded by another municipality or county for the provision of EMS;

(B) an emergency response made in connection with an existing mutual aid agreement; or

(C) an activation of a statewide emergency or disaster response by the department.

(10) Paragraph (9) of this subsection does not apply to renewal of an EMS provider license or a municipality, county, emergency services district, hospital, or EMS volunteer provider organization in this state that applies for an EMS provider license.

(11) Paragraph (9) of this subsection does not apply to fixed or rotor wing EMS providers.

(d) EMS Provider License.

(1) License.

(A) Applicants who have submitted all required documents and who have met all the criteria for licensure will be issued a provider license to be effective for a period of two years from the date of issuance.

(B) Licenses shall be issued in the name of the applicant.

(C) License expiration dates may be adjusted by the department to create licensing periods less than two years for administrative purposes.

(D) An application for an initial license or for the renewal of a license may be denied to a person or legal entity who owns or who has owned any portion of an EMS provider service or who operates/manages or who/which has operated/managed any portion of an EMS provider service which has been sanctioned by or which has a proposed disciplinary action/sanction pending against it by the department or any other local, state or federal agency.

(E) The license will be issued in the form of a certificate which shall be prominently displayed in a public area of the provider's primary place of business.

(F) An EMS Provider License issued by the department shall not be transferable to another person or entity.

(2) Vehicle Authorization.

(A) The department will issue an authorization for each vehicle to be operated by the applicant which meets all criteria for approval as defined in subsection (d) of this section.

(B) A vehicle authorization shall be issued for the following levels of service, and a provider may operate at a higher level of service based on appropriate staffing, equipment and medical direction for that level. A vehicle authorization will include a level of care designation at one of the following levels:

(i) Basic Life Support (BLS);

(ii) BLS with Advanced Life Support (ALS) capability;

(iii) BLS with Mobile Intensive Care Unit (MICU) capability;

(iv) Advanced Life Support (ALS);

(v) ALS with MICU capability;

(vi) Mobile Intensive Care Unit (MICU);

(vii) Air Medical:

(I) Rotor wing; or

(II) Fixed wing; and

(viii) Specialized.

(C) Change of Vehicle Authorization. To change an authorization to a different level the provider shall submit a request with appropriate documentation to the department verifying the provider's ability to perform at the requested level. A fee of $30 shall be required for each new authorization requested. The provider shall allow sufficient time for the department to verify the documentation and conduct necessary inspections before implementing service at the requested authorization level.

(D) Vehicle Authorizations are not required to be specific to particular vehicles and may be interchangeably placed in other vehicles as necessary. The original Vehicle Authorization for the appropriate level of service shall be prominently displayed in the patient compartment of each vehicle:

(E) Vehicle Authorizations are not transferable between providers.

(F) A replacement of a lost or damaged license or authorization may be issued if requested with a nonrefundable fee of $10.

(3) Declaration of Business Operational Name and Administration.

(A) The applicant shall submit a list of all business operational names under which the service is operated. If the applicant intends to operate the service under a name or names different from the name for which the license is issued, the applicant shall submit certified copies of assumed name certificates.

(B) A change in the operational name which the service is operated will require a new application and a prorated fee as determined by the department. A new provider number will be issued.

(C) Name of Administrator of Record must be declared. The applicant shall submit a notarized document declaring the full name of the chief administrator, his/her mailing address and telephone number to whom the department shall address all official communications in regard to the license.

(e) Vehicles.

(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation of adult, pediatric, and neonatal patients safely and efficiently. A pediatric and neonatal equipment list should be based on endorsed pediatric equipment national standards within the approved equipment list required by the medical director.

(2) EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must allow all required procedures to be carried out in a safe and effective manner.

(3) As approved by the department, EMS vehicles must meet a practical efficient minimum national ambulance vehicle body type, dimension and safety criteria standards.

(4) All vehicles shall have an environmental system capable of heating or cooling the patient(s) and staff, in accordance with the manufacturer specifications, within the patient compartment at all times when in service and which allows for protection of medication, according to manufacturer specifications, from extreme temperatures if it becomes environmentally necessary. The provider shall provide evidence of an operational policy which shall list the parenteral pharmaceuticals authorized by the medical director and which shall define the storage and/or FDA recommendations. Compliance with the policy shall be incorporated into the provider's Quality Assurance process and shall be documented on unit readiness reports.

(5) EMS vehicles shall have operational two-way communication capable of contacting appropriate medical resources and as outlined in the current Texas interoperability plan unless the vehicle is designated as being out of service using the form provided by the department.

(6) EMS vehicles shall be in compliance with all applicable federal, state and local requirements unless the vehicle is designated out of service with the form provided by the department.

(7) All EMS vehicles shall have the name of the provider and a current department issued EMS provider license number prominently displayed on both sides of the vehicle in at least 2 inch lettering and in contrasting color. The license number shall have the letters TX prior to the license number. This requirement does not apply to fixed or rotor wing aircraft.

(f) Substitution, replacement and additional EMS vehicles.

(1) The EMS provider shall notify the department within five business days if the EMS provider substitutes or replaces a vehicle. No fee is required for a vehicle substitution or replacement.

(2) The EMS provider shall notify the department if the EMS provider adds a vehicle to the provider's operational fleet prior to making the vehicle response-ready. A vehicle authorization request shall be submitted with a nonrefundable vehicle fee prior to the vehicle being placed into service.

(g) Staffing Plan Required.

(1) The applicant shall submit a completed EMS Personnel Form listing each response person assigned to staff EMS vehicles by name, certification level, and department issued certification/license identification number.

(2) An EMS provider responsible for an emergency response area that is unable to provide continuous coverage within the declared service areas shall publish public notices in local media of its inability to provide continuous response capability and shall include the days and hours of its operation. The EMS provider shall notify all the public safety-answering points and all dispatch centers of the days and hours when unable to provide coverage. The EMS provider shall submit evidence that reasonable attempts to secure coverage from other EMS providers have been made.

(3) The applicant must provide proof at initial and renewal of license that all licensed or certified personnel have completed a jurisprudence examination approved by the department on state and federal laws and rules that affect EMS.

(h) Minimum Staffing Required.

(1) BLS--When response-ready or in-service, authorized EMS vehicles operating at the BLS level shall be staffed at a minimum with two emergency care attendants (ECAs).

(2) BLS with ALS capability--When response-ready or in-service below ALS two ECAs. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT)-Intermediate or AEMT and at least an EMT.

(3) BLS with MICU capability--When response-ready or in-service below MICU two ECAs. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(4) ALS--When response-ready or in-service, authorized EMS vehicles operating at the ALS level shall be staffed at a minimum with one EMT Basic and one AEMT or EMT-Intermediate.

(5) ALS with MICU capability--When response-ready or in-service below MICU shall require one EMT-Intermediate or AEMT and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(6) MICU--When response-ready or in-service, authorized EMS vehicles operating at the MICU level shall be staffed at a minimum with one EMT Basic and one certified or licensed EMT-Paramedic.

(7) Specialized--When response-ready or in-service, EMS vehicles authorized to operate for a specialized purpose shall be staffed with a minimum of two personnel appropriately licensed and/or certified as determined by the type and application of the specialized purpose and as approved by the medical director and the department.

(8) For air ambulance staffing requirements refer to §157.12(f) of this title (relating to Rotor-wing Air Ambulance Operations) or §157.13(g) of this title (relating to Fixed-wing Air Ambulance Operations).

(9) When response-ready or in-service, authorized EMS vehicles may operate at a lower level than licensed by the department. When operating at the BLS level with an ALS/MICU ambulance, the EMS provider must have an approved security plan for the ALS/MICU medication as approved by the EMS provider medical director's protocol and/or policy.

(10) As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.

(i) Treatment and Transport Protocols Required.

(1) The applicant shall submit written delegated standing orders for patient treatment and transport protocols and policies related to patient care which have been approved and signed by the provider's medical director.

(2) The protocols shall have an effective date.

(3) The protocols shall address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff, may provide patient care on behalf of the provider and/or in the provider's EMS vehicles.

(4) The protocols shall address the use of all required, additional, and/or specialized medical equipment, supplies, and pharmaceuticals carried on each EMS vehicle in the provider's fleet.

(5) The protocols shall identify delegated procedures for each EMS Certification or license level utilized by the provider.

(6) The protocols shall indicate specific applications, including geographical area and duty status of personnel.

(j) EMS Equipment, supplies, medical devices, parenteral solutions and pharmaceuticals.

(1) The EMS provider shall submit a list, approved and signed by the medical director and fully supportive of and consistent with the protocols, of all medical equipment, supplies, medical devices, parenteral solutions and pharmaceuticals to be carried. The list shall specify the quantities of each item to be carried and shall specify the sizes and types of each item necessary to provide appropriate care for all age ranges appropriate to the needs of their patients. The quantities listed shall be appropriate to the provider's call volume, transport times and restocking capabilities.

(2) All patient care equipment, and medical devices must be operational, appropriately secured in the vehicle at the time of providing patient care and response ready, and supplies shall be clean and fully operational. All patient care powered equipment shall have manual mechanical, spare batteries or an alternative power source, if applicable.

(3) All solutions and pharmaceuticals shall be up to date and shall be stored and maintained in accordance with the manufacturer's and/or U.S. Federal Drug Administration (FDA) recommendations.

(4) The requirements for air ambulance equipment and supplies are listed in 157.12(h) of this title or §157.13(h) of this title.

(k) The following equipment shall be present on each EMS in-service vehicle and on, or immediately available for, each response-ready vehicle as specified in the equipment list as required by the medical director's approved equipment list to include all state required equipment. The equipment list shall include equipment required for treatment and transport of adult, pediatric, and neonatal patients.

(1) Basic Life Support (BLS):

(A) Equipment required to administer the BLS scope of practice and incorporates the knowledge, competencies and basic skills of an EMT/ECA and additional skills as authorized by the EMS provider medical director. All BLS ambulances shall be able to perform treatment and transport patients receiving the following skills:

(i) airway/ventilation/oxygenation;

(ii) cardiovascular circulation;

(iii) immobilization;

(iv) medication administration - routes; and

(v) single and multi-system trauma patients.

(B) oropharyngeal airways;

(C) portable and vehicle mounted suction;

(D) bag valve mask units, oxygen capable;

(E) portable and vehicle mounted oxygen;

(F) oxygen delivery devices;

(G) dressing and bandaging materials;

(H) commercial tourniquet;

(I) rigid cervical immobilization devices;

(J) spinal immobilization devices;

(K) extremity splints;

(L) equipment to meet special patient needs;

(M) equipment for determining and monitoring patient vital signs, condition or response to treatment;

(N) pharmaceuticals, as required by the medical director's protocols;

(O) an external cardiac defibrillator appropriate to the staffing level with two sets of adult and two sets of pediatric pads;

(P) a patient-transport device capable of being secured to the vehicle, and the patient must be fully restrained per manufacturer recommendations; and

(Q) an epinephrine auto injector or similar device capable of treating anaphylaxis.

(2) Advanced Life Support (ALS):

(A) equipment required to administer the ALS scope of practice and incorporates the knowledge, competencies and basic and advanced skills of an AEMT and additional skills as authorized by the EMS provider medical director. All ALS ambulances shall be able to perform treatment and transport patients receiving the following skills, including all required BLS equipment to perform treatment and transport patients receiving the following skills:

(i) airway/ventilation/oxygenation;

(ii) cardiovascular circulation;

(iii) immobilization;

(iv) medication administration - routes; and

(v) intravenous (IV) initiation/maintenance fluids.

(B) all required BLS equipment;

(C) advanced airway equipment;

(D) IV equipment and supplies;

(E) pharmaceuticals as required by medical director protocols; and

(F) wave form capnography or state approved carbon dioxide detection equipment must be used after January 1, 2018, when performing or monitoring endotracheal intubation.

(3) MICU:

(A) equipment required to administer the knowledge, competencies and advanced skills of a paramedic, and additional skills as authorized by the EMS provider medical director. All MICU ambulances shall be able to perform treatment and transport patients receiving the following skills:

(i) airway/ventilation/oxygenation;

(ii) cardiovascular circulation;

(iii) immobilization;

(iv) medication administration - routes; and

(v) intravenous (IV) initiation/maintenance fluids.

(B) all required BLS and ALS equipment;

(C) with transmitting 12-lead capability cardiac monitor/defibrillator by January 1, 2020; and

(D) pharmaceuticals as required by medical director protocols.

(4) BLS with ALS Capability:

(A) all required BLS equipment, even when in service or response ready at the ALS level; and

(B) all required ALS equipment, when in service or response ready at the ALS level.

(5) BLS with MICU Capability:

(A) all required BLS equipment, even when in service or response ready at the MICU level; and

(B) all required MICU equipment, when in service or response ready at the MICU level.

(6) ALS with MICU Capability:

(A) all required ALS equipment, even when in service or response ready at the MICU level; and

(B) all MICU equipment, when in service or response ready at the MICU level.

(7) In addition to medical supplies and equipment as defined in subsection (k) of this section, EMS vehicles must also have:

(A) a complete and current copy of written or electronic formatted protocols approved and signed by the medical director; with a current and complete equipment, supply, and medication list available to the crew;

(B) operable emergency warning devices;

(C) personal protective equipment for the EMS vehicle staff, including at least:

(i) protective, non-porous gloves;

(ii) medical eye protection;

(iii) medical respiratory protection must be available per crew member, meeting National Institute for Occupational Safety and Health (NIOSH) approved N95 or greater standards;

(iv) medical protective gowns or equivalent; and

(v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) portable, battery-powered flashlight (not a pen-light);

(G) a mounted, currently inspected, 5 pound ABC fire extinguisher (not applicable to air ambulances);

(H) "No Smoking" signs posted in the patient compartment and cab of vehicle;

(I) a current emergency response guide book, or an electronic version that is available to the crew (for hazardous materials); and

(J) each vehicle will carry 25 triage tags in coordination with the Regional Advisory Council (RAC).

(8) As justified by specific patient needs, and when qualified personnel are available, EMS providers may appropriately utilize equipment in addition to that which is required by their authorization levels. Such equipment must be consistent with protocols and/or patient- specific orders and must correspond to personnel qualifications.

(l) National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

(1) an accreditation self-study;

(2) a copy of the formal accreditation certificate; and

(3) any correspondence or updates to or from the accrediting organization which impact the provider's status.

(m) Subscription or Membership Services. An EMS provider that operates or intends to operate a subscription or membership program for the provision of EMS within the provider's service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. To obtain department approval for a subscription or membership program, the EMS provider shall:

(1) Obtain written authorization from the highest elected official (County Judge or Mayor) of the political subdivision(s) where subscriptions will be sold. Written authorization must be obtained from each County Judge if subscriptions are to be sold in multiple counties.

(A) The County Judge must provide written authorizations, if subscriptions are to be sold throughout a county.

(B) The Mayor may provide written authorization if subscriptions are sold exclusively within the boundaries of an incorporated town or city.

(C) If an EMS provider is not the primary emergency provider in any area where they are going to sell a subscription plan, written notification must be provided to the participants receiving subscription plan stating that the EMS Provider is not the primary emergency provider in this area. A copy of this documentation should be provided to the primary emergency provider and the department within 30 days before the beginning of any enrollment period.

(2) Submit a copy of the contract used to enroll participants.

(3) The EMS provider shall maintain a current file of all advertising for the service. Submit a copy of all advertising used to promote the subscription service within 30 days before the beginning of any enrollment period.

(4) Comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service.

(5) Provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be on a department bond form and be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self-insurance an amount equal to the funds to be subscribed if the provider is a function of a governmental entity.

(6) Not deny emergency medical services to non-subscribers or subscribers of non-current status.

(7) Be reviewed at least every year; and the subscription program may be reviewed by the department at any time.

(8) Furnish a list after each enrollment period with the names, addresses, dates of enrollment of each subscriber, and subscription fee paid by each subscriber.

(9) Furnish the department beginning and ending dates of enrollment period(s). Subscription service period shall not exceed one year. Subscribers shall not be charged more than a prorated fee for the remaining subscription service period that they subscribe for.

(10) Furnish the department with the total amount of funds collected each year.

(11) Not offer membership nor accept members into the program who are Medicaid clients.

(n) Responsibilities of the EMS provider. During the license period, the EMS provider's responsibilities shall include:

(1) assuring that all response-ready and in-service vehicles are available 24 hours a day and seven days a week, maintained, operated, equipped and staffed in accordance with the requirements of the provider's license, to include staffing, equipment, supplies, required insurance and additional requirements per the current EMS provider's medical director approved protocols and policies;

(2) each EMS provider shall develop, implement, maintain, and evaluate an effective, ongoing, system-wide, data-driven, interdisciplinary quality assessment and performance improvement program. The program shall be individualized to the provider and shall, at a minimum, include:

(A) the standard of patient care as directed by the medical director's protocols and medical director input into the provider's policies and standard operating procedures;

(B) a complaint management system;

(C) monitoring the quality of patient care provided by the personnel and taking appropriate and immediate corrective action to insure that quality of care is maintained in accordance with the existing standards of care and the provider medical director's signed, approved protocols;

(D) the program shall include, but not be limited to, an ongoing program that achieves measurable improvement in patient care outcomes and reduction of medical errors;

(3) provide an attestation or provide documentation that its management staff will or continue to participate in the local regional advisory council;

(4) when an air ambulance is initiated through any other method than the local 911 system the air service providing the air ambulance is required to notify the local 911 center or the appropriate local response system for the location of the response at time of launch. This would not include interfacility transports or schedule transports;

(5) ensuring that all personnel are currently certified or licensed by the department;

(6) assuring that all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the EMS provider's name. A provider may utilize an alternative identification system in incident specific situations that pose a potential for danger if the individuals are identified by name;

(7) assuring the confidentiality of all patient information is in compliance with all federal and state laws;

(8) assuring that Informed Treatment/Transport Refusal forms are signed by all persons refusing service, or documenting incidents when a signed Informed Treatment/Transport Refusal form cannot be obtained;

(9) assuring that patient care reports are completed accurately for all patients and meet standards as outlined in 25 Texas Administrative Code, Chapter 103;

(10) assuring that patient care reports are provided to facilities receiving the patient:

(A) whenever operationally feasible, the report shall be provided to the receiving facility at the time the patient is delivered or a full written or computer generated report shall be delivered to the facility within 24 hours of the delivery of the patient,

(B) if in a response-pending status, an abbreviated documented report shall be provided at the time the patient is delivered and a completed written or computer generated report shall be delivered to the facility within 24 hours of the delivery of the patient;

(C) the abbreviated report shall document, at a minimum, the patient's name, patient's condition upon arrival at the scene; the prehospital care provided; the patient's condition during transport, including signs, symptoms, and responses to treatment during the transport; the call initiation time; dispatch time; scene arrival time; scene departure time; hospital arrival time; and, the identification of the ambulance staff; and

(D) in lieu of subparagraph (C) of this paragraph, personnel may follow the Regional Advisory Council's process for providing abbreviated documentation to the receiving facility.

(11) assuring that all pharmaceuticals are stored according to conditions specified in the pharmaceutical storage policy approved by the EMS provider's medical director;

(12) assuring that staff completes a readiness inspection as written by the EMS provider's policy;

(13) assuring that there is a preventive maintenance plan for vehicles and equipment.

(14) assuring that staff has reviewed policies and procedures as approved by the EMS Provider and the EMS Provider Medical Director;

(15) Maintenance of medical reports.

(A) A licensed EMS provider shall maintain adequate medical reports of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the EMS provider.

(B) If a patient was younger than 18 years of age when last treated by the provider, the medical reports of the patient shall be maintained by the EMS provider until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(C) An EMS provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the provider knows the proceeding has been finally resolved.

(D) EMS providers shall retain medical records for a longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(E) EMS providers may transfer ownership of records to another licensed EMS provider only if the EMS provider, in writing, assumes ownership of the records and maintains the records consistent with this chapter.

(F) Destruction of medical records shall be done in a manner that ensures continued confidentiality.

(G) At the time of initial licensing and at each license renewal, the EMS provider and medical director must attest or provide documentation to the department a plan for the going out of business, selling, transferring the business to ensure the maintenance of the medical record as outlined in subparagraph (E) of this paragraph.

(H) The emergency medical services provider must maintain all patient care records in the physical location that is the provider's primary place of business, unless the department approves an alternate location.

(16) assuring that all requested patient records are made promptly available to the medical director, hospital or department when requested;

(17) assuring that current protocols, equipment, supply and medication lists, and the correct original Vehicle Authorization at the appropriate level are maintained on each response-ready vehicle;

(18) monitoring and enforcing compliance with all policies and protocols;

(19) assuring provisions for the appropriate disposal of medical and/or biohazardous waste materials;

(20) assuring ongoing compliance with the terms of first responder agreements;

(21) assuring that all documents, reports or information provided to the department and hospital are current, accurate and complete;

(22) assuring compliance with all federal and state laws and regulations and all local ordinances, policies and codes at all times;

(23) assuring that all response data required by the department is submitted in accordance with §103.5 of this title (relating to Reporting Requirements for EMS Providers);

(24) assuring that, whenever there is a change in the EMS provider's name or the service's operational assumed name, the printed

name on the vehicles are changed accordingly within 30 days of the change;

(25) assuring that the department is notified within 30 business days whenever:

(A) a vehicle is sold, substituted or replaced;

(B) there is a change in the level of service;

(C) there is a change in the declared service area as written on an initial or renewal application;

(D) there is a change in the official business mailing address;

(E) there is a change in the physical location of the business and/or substations;

(F) there is a change in the physical location of patient report file storage, to assure that the department has access to these records at all times; and

(G) there is a change of the administrator of record.

(26) assuring that when a change of the medical director has occurred the department is notified within one business day;

(27) develop, implement and enforce written operating policies and procedures required under this chapter and/or adopted by the licensee. Assure that each employee (including volunteers) is provided a copy upon employment and whenever such policies and/or procedures are changed. A copy of the written operating policies and procedures shall be made available to the department on request. Policies at a minimum shall adequately address:

(A) personal protective equipment;

(B) immunizations available to staff;

(C) infection control procedures;

(D) management of possible exposure to communicable disease;

(E) emergency vehicle operation;

(F) contact information for the designated infection control officer for whom education based on U.S. Code, Title 42, Chapter 6A, Subchapter XXIV, Part G, §300ff- 136 has been documented.

(G) credentialing of new response personnel before being assigned primary care responsibilities. The credentialing process shall include as a minimum:

(i) a comprehensive orientation session of the services, policies and procedures, treatment and transport protocols, safety precautions, and the quality management process; and

(ii) an internship period in which all new personnel practice under the supervision of, and are evaluated by, another more experienced person.

(H) appropriate documentation of patient care; and

(I) vehicle checks, equipment, and readiness inspections;

(J) the security of medications, fluids and controlled substances in compliance with local, state and federal laws or rules.

(28) assuring that manufacturers' operating instructions for all critical patient care electronic and/or technical equipment utilized by the provider are available for all response personnel;

(29) assuring that the department is notified within five business days of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever:

(A) the vehicle is rendered disabled and inoperable at the scene of the occurrence; or

(B) there is a patient on board.

(30) assuring that the department is notified within one business day of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever there is personal injury or death to any person;

(31) maintaining motor vehicle liability insurance as required under the Texas Transportation Code;

(32) maintaining professional liability insurance coverage in the minimum amount of $500,000 per occurrence, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient;

(33) insuring continuous coverage for the service area defined in documents submitted with the EMS provider application;

(34) responding to requests for assistance from the highest elected official of a political subdivision or from the department during a declared emergency or mass casualty situation according to national, state, regional and/or local plans, when authorized;

(35) providing written notice to the department, RAC and Emergency Medical Task Force, if the EMS provider will make staff and equipment available during a declared emergency or mass casualty situation, for a state or national mission, when authorized;

(36) assuring all EMS personnel receive continuing education on the provider's anaphylaxis treatment protocols. The provider shall maintain education and training records to include date, time, and location of such education or training for all its EMS personnel;

(37) immediately notify the department in writing when operations cease in any service area;

(38) assure that all patients transported by stretcher must be in a department authorized EMS vehicle; and

(39) develop or adopt and then implement policies, procedures and protocols necessary for its operations as an EMS provider, and enforce all such policies, procedures and protocols.

(o) License renewal process.

(1) It shall be the responsibility of the provider to request license renewal application information.

(2) EMS providers shall submit a completed application, all other required documentation and a nonrefundable license renewal fee, no later than 90 days prior to the expiration date of the current license.

(A) When a complete application is received by the department 90 or more days prior to the expiration date of the current license that is to be renewed, the applicant shall submit a nonrefundable application fee of $400 per provider plus $180 for each EMS vehicle.

(B) When a complete application is received by the department 60 or more days, but less than 90 days prior to the expiration date of the current license that is to be renewed, the applicant shall submit a nonrefundable application fee of $450 per provider plus $180 for each EMS vehicle.

(C) When a complete application is received by the department less than 60 days prior to the expiration of the current license, the applicant shall submit a nonrefundable application fee of $500 per provider plus $180 for each EMS vehicle.

(D) If the application for renewal is received by the department after the expiration date of the current license, it is deemed to be untimely filed and that license expires on its expiration date. The EMS provider will be required to file a new initial application and follow the initial application process.

(E) An EMS provider may not operate after its license has expired.

(p) Provisional License. The department may issue an EMS provisional license if an urgent need exists in a service area when the department finds that the applicant is in substantial compliance with the provisions of this section and if the public interest would be served. A provisional license shall be effective for no more than 30 days from the date of issuance.

(1) An EMS provider may apply for a provisional license by submitting a written request and a nonrefundable fee of $30.

(2) A provisional license issued by the department may be revoked at any time by the department, with written notice to the provider, when the department finds that the provider is failing to provide appropriate service in accordance with this section or that the provider is in violation of any of the requirements of this chapter.

(q) Advertisements.

(1) Any advertising by an EMS provider shall not be misleading, false, or deceptive. When an EMS provider advertises in Texas and/or conducts business in Texas by regularly transporting patients from, or within Texas, the provider shall be required to have a Texas EMS Provider License.

(2) An EMS provider shall not advertise levels of patient care which it cannot provide at all times. The provider shall not use a name, logo, art work, phrase or language that could mislead the public to believe a higher level of care is being provided.

(3) An EMS provider that has more than five paid staff, but is composed of at least 75% volunteer EMS personnel may advertise as a volunteer service.

(r) Surveys/Inspections and Investigations.

(1) The department may conduct scheduled or unannounced on-site inspection or investigation of a provider's vehicles, office(s), headquarter(s) and/or station(s) (hereinafter operations), at any reasonable time, including while services are being provided, to ensure compliance with Health and Safety Code, Chapter 773 and this chapter.

(2) An applicant or licensee, by applying for or holding a license, consents to entry and inspection or investigation of any of its operations by the department, as provided for by the Health and Safety Code, Chapter 773 and this chapter.

(3) Department's inspections or investigations to evaluate an EMS provider's compliance with the requirements of the Health and Safety Code, Chapter 773 and this chapter, may include:

(A) initial, prelicensure and change in status inspections for the issuance of a new license;

(B) routine inspection conducted at the departments' discretion or prior to renewal;

(C) follow-up on-site inspection, conducted to evaluate implementation of a plan of correction for deficiencies cited during a department investigation or inspection;

(D) a complaint investigation, conducted in response to a report or complaint, as described in subsection (u) of this section, relating to complaint investigations; and

(E) an inspection to determine if a person, company, or organization is offering or providing EMS service(s) without a license, or to determine if EMS vehicles are being staffed by persons who do not hold Texas EMS certification or license.

(4) The provider and medical director shall cooperate with any department investigation or inspection, and shall, consistent with applicable law, permit the department to examine the provider's grounds, buildings, books, records and other documents and information maintained by or on behalf of the provider, that are necessary to evaluate compliance with applicable statutes, rules, plans of correction and orders with which the EMS provider is required to comply. The EMS provider shall permit the department, consistent with applicable law, to interview members of the governing authority, personnel and patients.

(5) The EMS provider shall, consistent with applicable law, permit the department to copy or reproduce, or shall provide photocopies to the department of any requested records or documents. If it is necessary for the department to remove records or other information (other than photocopies) from the provider's premises, the department will provide the EMS provider's governing authority or designee with a written statement of this fact, describing the information being removed and when it is expected to be returned. The department will make a reasonable effort, consistent with the circumstances, to return the records the same day.

(6) The department will hold an entrance conference with the EMS provider, governing authority or designee before beginning the inspection or investigation, to explain, consistent with applicable law, the nature, scope and estimated time schedule of the inspection or investigation.

(7) Except for a complaint investigation or a follow-up visit, an inspection will include an evaluation of compliance with the Health and Safety Code, Chapter 773 and the rules of this chapter. During the inspection, the department representative will, unless otherwise provided for by law, inform the EMS provider's governing authority or designee of the preliminary findings and give the provider a reasonable opportunity to submit additional facts or other information to the department representative in response to those findings.

(8) When the inspection is complete, the department will hold an exit conference with the provider, unless otherwise provided for by law, to inform the provider, to the extent permitted by law, of any preliminary findings of the inspection or investigation and to give the EMS provider the opportunity to provide additional information regarding the deficiencies cited. If no deficiencies are identified at the time of inspection, a statement indicating this fact may be left with the EMS provider's governing authority or designee. Such a statement does not constitute a department finding or certification that the facility is in compliance.

(9) If deficiencies are cited:

(A) the department will provide the EMS provider's administrator of record and medical director with a written deficiency report no more than 30 calendar days after the exit conference.

(B) The EMS provider's governing authority, designee, or person in charge at the time shall sign an acknowledgement of the in-

spection and receipt of the written deficiency report and return it to the department. The signature does not indicate the EMS provider's agreement with, or admission to the cited deficiencies unless the agreement or admission is explicitly stated.

(C) No later than 30 calendar days after the EMS provider's receipt of the deficiency report, the EMS provider shall return a written plan of correction to the department for each deficiency, including time frames for implementation, together with any additional evidence of compliance the EMS provider may have, regarding any cited deficiency. The department will determine if the written plan of correction and proposed timeframes for implementation are acceptable. If the plan is not acceptable, the department will notify the provider in writing no later than 30 days after receipt and request a modified plan. The EMS provider shall modify and resubmit the plan of correction no later than 30 calendar days after the EMS provider's receipt of the request. The EMS provider shall correct the identified deficiencies and submit documentation to the department verifying completion of the corrective action within the timeframes set forth in the plan of correction accepted by the department, or as otherwise specified by the department. The provider will be deemed to have received the deficiency report or other department correspondence mailed under this subparagraph three days after mailing.

(D) Regardless of the EMS provider's compliance with this subsection, the department's acceptance of the provider's plan of correction, or the provider's utilization of an informal compliance group review under paragraph (10) of this subsection, the department may, at any time, propose to take action as appropriate under §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation, Denial of a Provider License or Administrative Penalties).

(10) The department inspector will inform the provider's chief executive officer, designee, or person in charge at the time of the inspection, of the provider's right to an informal compliance group review, when there is disagreement with deficiencies cited by the inspector or investigator, that the provider was unable to resolve through submission of information to the inspector or additional information bearing on the deficiencies cited.

(11) The department shall refer issues and complaints relating to the conduct or actions by licensed professionals to their appropriate licensing boards.

(12) All initial applicants and their medical director shall be required to have an initial compliance survey by the department that evaluates all aspects of the applicant's proposed operations including clinical care components and an inspection of all vehicles prior to the issuance of a license.

(13) At renewal, randomly, or in response to a complaint, the department may conduct an unannounced compliance survey that includes inspection of a provider's vehicles, operations and/or records to ensure compliance with this title at any time, including nights or weekends.

(14) If a re-survey/inspection to ensure correction of a deficiency is conducted, the provider shall pay a nonrefundable fee of $30 per vehicle needing a re-inspection.

(s) Specialty Care Transports. A Specialty Care Transport is defined as the interfacility transfer by a department licensed EMS provider of a critically ill or injured patient requiring specialized interventions, monitoring and/or staffing. To qualify to function as a Specialty Care Transport the following minimum criteria shall be met:

(1) Qualifying Interventions:

(A) patients with one or more of the following IV infusions: vasopressors; vasoactive compounds; antiarrhythmics; fibrinolytics; tocolytics; blood or blood products and/or any other parenteral pharmaceutical unique to the patient's special health care needs; and

(B) one or more of the following special monitors or procedures: mechanical ventilation; multiple monitors; cardiac balloon pump; external cardiac support (ventricular assist devices, etc); any other specialized device, vehicle or procedure unique to the patient's health care needs.

(2) Equipment. All specialized equipment and supplies appropriate to the required interventions shall be available at the time of the transport.

(3) Minimum Required Staffing. One currently certified EMT-Basic and one currently certified or licensed paramedic with the additional training as defined in paragraph (4) of this subsection; or, a currently certified EMT-Basic and a currently certified or licensed paramedic accompanied by at least one of the following: a Registered Nurse with special knowledge of the patient's care needs; a certified Respiratory Therapist; a licensed physician; or, any other licensed health care professional designated by the transferring physician.

(4) Additional Required Education and Training for Certified/Licensed Paramedics: Evidence of successful completion of post-paramedic education, training and appropriate periodic skills verification in management of patients on ventilators, 12 lead EKG and/or other critical care monitoring devices, drug infusion pumps, and cardiac and/or other critical care medications, or any other specialized procedures or devices determined at the discretion of the EMS provider's medical director.

(t) For all initial applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with the initial application and renewal application processing through Texas Online.

(u) Complaint Investigations.

(1) Upon request, all licensed EMS Providers shall make available for a patient or its legal guardian a written statement supplied by the department, identifying the department as the responsible agency for conducting EMS provider and EMS personnel complaint investigations. The statement shall inform persons that they may direct a complaint to the Department of State Health Services, EMS Compliance Group, by phone, or by email. The statement shall provide the most current contact information, including the appropriate department group, address, local and toll-free telephone number, and email address for filing a complaint.

(2) The department evaluates all complaints made against EMS providers and/or EMS personnel. Any complaint submitted to the department shall be submitted by telephone, electronically, or in writing, using the department's current contact information for that purpose, as described in paragraph (1) of this subsection.

(3) The department will document, evaluate and prioritize complaints and information received, based on the seriousness of the alleged violation and the level of risk to patients, personnel and/or the public.

(A) Allegations determined to be within the department's regulatory jurisdiction relating to emergency medical services are authorized for investigation under this chapter. Complaints received that are outside the department's jurisdiction may be referred to another appropriate agency for response.

(B) The investigation is conducted on-site, by telephone and/or through written correspondence.

(4) The department conducts a prompt and thorough investigation of all reports or complaint allegations that may pose a threat of harm to the health and safety of patients or participants. Reports or complaints received by the department concerning alleged abuse, neglect and exploitation will be addressed in accordance with Human Resources Code, Chapter 48 and Family Code, §261.101(d).

(5) The department evaluates complaint allegations that do not pose a significant risk of harm to patients. Based on the nature and severity of the alleged incident, the department determines whether to investigate the complaint directly or to require the provider to conduct an internal investigation and submit its findings and supporting evidence to the department.

(A) The findings of an EMS provider's internal investigation will be reviewed by the department and may result in an additional investigation by the department, a request for a plan of correction to be completed by the provider in accordance with subsection (q) of this section (relating to inspections and investigations) and/or a proposal to take action against the provider under §157.16 of this title.

(B) The EMS provider under investigation shall provide department staff access to all documents, evidence and individuals related to the alleged violation, including all evidence and documentation relating to any internal investigations.

(6) Once an internal EMS provider investigation and/or department investigation is complete, the department reviews the evidence from the investigation to evaluate whether the evidence substantiates the complaint and what corrective action, if any, is needed.

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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Cynthia Hernandez
General Counsel
Department of State Health Services
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CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §229.661, concerning Cottage Food Production Operations and §§229.702 - 229.704, concerning Farmers' Markets.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with amendments to Texas Health and Safety Code Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, And Roadside Food Vendors as promulgated in Senate Bill (S.B.) 617, 87th Legislature, Regular Session, 2021. S.B. 617 clarifies who may sell products at a farmers' market by changing the definition of "farmers' market" at Texas Health and Safety Code §437.020(a)(1) and adding a new definition for "food producer" at Texas Health and Safety Code §437.020(a)(3). The two definitions effectively prohibit a jurisdiction from construing the statute to exclude non-farmers or non-farm-related vendors and products from farmers' markets within its jurisdiction.

S.B. 617 also amends Texas Health and Safety Code §437.0065, which clarifies which food vendors may be permitted to sell food at a farmers' market and necessitates amendment of the statutory parameters for permitting in §229.703. This includes a $100/*per annum* cap on a single permit that is valid at any farmers' market in the jurisdiction of the permitting authority.

In addition, it is necessary to make editorial changes to the rules due to the changes of the Retail Food Establishment rules in 25 TAC, Chapter 228, which includes the adoption by reference of the U.S. Food and Drug Administration Food Code 2017 (Food Code). Rule citations in Chapter 229, Subchapters EE and FF are changed from Chapter 228 to the Food Code. The revisions update the definition of "food establishment" in §229.661(b)(9); change cooking times and requirements; and update references to "time and temperature control for safety food (TCS food)" in §229.704. Other editorial changes are made for consistency and clarity throughout the subchapters.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §229.661(b)(7) changes the definition of "farmers' market" to correspond with the amended definition at Texas Health and Safety Code §437.020(a)(1).

The proposed amendment to §229.661(b)(9) changes the definition of "food establishment" to correspond with the definition contained in the Food Code.

The proposed amendment adds Subpart F to the previous citation from the Code of Federal Regulations at §229.661(d)(5).

The proposed amendment to §229.702(2) adds a definition of "farmer" to clarify the term in the rules.

The proposed amendment to §229.702(3) changes the definition of "farmers' market" to correspond with Texas Health and Safety Code §437.020(a)(1). In addition, DSHS added verbiage for clarification.

The proposed amendments to §229.702(4) and (11) change the rule citations from the former Retail Food Establishment rules to the Food Code.

New §229.702(6) adds a new definition for "food producer" to correspond with the new definition at Texas Health and Safety Code §437.020(a)(3).

The proposed amendment to §229.702(8) deletes the definition of "producer," which is replaced by the new definition of "food producer" at §229.702(6).

Section 229.702(2) - (10) are renumbered to paragraphs (3) - (11) to account for the addition of new paragraphs (2) and (6) and the deletion of previous paragraph (8).

The proposed amendment to §229.703 clarifies requirements for a permit to sell food at a farmers' market to correspond with Texas Health and Safety Code §437.0065.

The proposed amendments to §229.704 change references to "potentially hazardous food" to the more current usage that is "Time and temperature control for safety (TCS food)."

The proposed amendment to §229.704(c) deletes the phrase "at all times" to avoid redundancy.

The proposed amendments to §229.704(d)(1) and (2) change cooking times to reflect requirements in the Food Code.

The proposed amendments to §229.704(d)(5)(A) and (f) change the rule citations from the former Retail Food Establishment rules to the Food Code.

The proposed amendments add the word "Texas" for clarity in the Health and Safety Code and agency names throughout the subchapters.

FISCAL NOTE

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

Donna Sheppard has also determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules may have foreseeable implications relating to costs or revenues of local and county governments due to the cap of $100 permitting fee that food vendors will pay to the local governments. DSHS is unable to estimate the number of businesses operating or about to operate at farmers' markets in local health departments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

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

(6) the proposed rules will expand existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules due to the requirement that food producers may sell food products at farmers' markets; and

(8) the proposed rules will have a positive effect on the state's economy.

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

Donna Sheppard has also determined that any adverse economic effect due to rural communities being required to comply with the $100/*per annum* fee limitation will be at least partially mitigated by expanded access to farmers' markets by non-farm-related vendors in some jurisdictions that previously interpreted the farmers' market language in Texas Health and Safety Code, Chapter 437 and 25 TAC Chapter 229, Subchapter FF to prevent them access.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be expansion of access to farmers' markets to non-farm-related vendors in some jurisdictions that previously interpreted the farmers' market statute and rules so as to prevent them access. This provides a potential new market to some "food producers" and greater diversity of goods to consumers who buy food products at farmers' markets.

Donna Sheppard has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because of the $100 *per annum* cost of the permit that will accompany greater accessibility to farmers' markets.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written Comments on the proposal may be submitted to Joe Williams or Jason Guzman at DSHS Consumer Protection Division/Public Sanitation and Retail Food Safety Branch, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, hand-delivered to 1100 West 49th Street, M428.6, Austin, Texas 78756, by voicemail to (512) 834-6753, by fax to (512) 834-6683, or by email to foodestablishments@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. CST on the last working day of the comment period; or (3) faxed or emailed before midnight CST on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R004" in the subject line.

SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATIONS

25 TAC §229.661

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The proposed amendment implements Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§229.661. Cottage Food Production Operations.

(a) Purpose. The purpose of this section is to implement Texas Health and Safety Code, Chapter 437, related to cottage food produc-

tion operations, which requires the department to adopt rules for labeling and production of foods by cottage food production operations.

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

(1) Acidified canned goods--Food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

(2) Baked good--A food item prepared by baking the item in an oven, which includes cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking.

(3) Cottage food production operation (operator)--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a time and temperature control for safety food (TCS food), as defined in paragraph (13) of this subsection;

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

(xiv) mustard;

(xv) roasted coffee or dry tea;

(xvi) a dried herb or dried-herb mix;

(xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or

(xx) any other food that is not a TCS food, as defined in paragraph (13) of this subsection.

(B) has an annual gross income of $50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(4) Department--The Texas Department of State Health Services.

(5) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission.

(6) Farm stand--A premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described in paragraph (3) of this subsection.

(7) Farmers' market--A designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers. A farmers' market must include vendors who meet the definition of "farmer" defined at §229.702(2) of this title (relating to Definitions) and may include vendors who meet the definition of "food producer" as defined at §229.702(6) of this title. [~~A designated location used primarily for the distribution and sale directly to consumers of food by farmers or other producers.~~]

(8) Fermented vegetable product--A low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

(9) Food establishment--

(A) Food establishment is [~~means~~] an operation that [~~stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:~~]:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, [;] retail food store, [;] satellite or catered feeding location, [;] catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, [;] market, [;] vending machine location, [;] self-service food market, conveyance used to transport people, [;] institution, [;] or food bank; and

(ii) [~~that~~] relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location, unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and [;] where consumption is on or off the premises, [~~; and~~] regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not TCS foods;

(ii) a produce stand that only offers whole, uncut fresh fruit [~~fruits~~] and vegetables;

(iii) a food processing plant, including one that is [~~those that are~~] located on the premises of a food establishment;

(iv) a cottage food production operation; [~~a kitchen in a private home if only food that is not TCS food is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;~~]

(v) a bed and breakfast limited as defined in §228.223 of this title (relating to Bed and Breakfast); or [~~an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;~~]

(vi) a private home that receives catered or home-delivered food. [~~a Bed and Breakfast Limited establishment as defined in §228.2 of this title (relating to Definitions) concerning food establishments;~~]

~~*[(vii)* a private home that receives catered or home-delivered food; or]~~

~~*[(viii)* a cottage food production operation.]~~

(10) Herbs--The leafy green parts of a plant (either fresh or dried) used for culinary purposes and not for medicinal uses.

(11) Home--A primary residence that contains a kitchen and appliances designed for common residential usage.

(12) Process authority--A person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.

(13) Time and temperature control for safety food (TCS food)--A food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A TCS food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses TCS food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

(c) Complaints. The department shall maintain a record of a complaint made by a person against an operator.

(d) Packaging and labeling requirements for cottage food production operations. All foods prepared by an operator shall be packaged and labeled in a manner that prevents product contamination.

(1) The label information shall include:

(A) the name and physical address of the cottage food production operation;

(B) the common or usual name of the product;

(C) disclosure of any major food allergens, such as eggs, nuts, soy, peanuts, milk, wheat, fish, or shellfish used in the product; and

(D) the following statement: "This food is made in a home kitchen and is not inspected by the Texas Department of State Health Services or a local health department."

(2) Labels must be legible.

(3) A food item is not required to be packaged if it is too large or bulky for conventional packaging. For these food items, the information required under paragraph (1) of this subsection shall be provided to the consumer on an invoice or receipt.

(4) A label for frozen raw and uncut fruit or vegetables must include the following statement in at least 12-point font when sold: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption" on the label or on an invoice or receipt provided with the frozen fruit or vegetables.

(5) Advertising media of cottage food products for health, disease, or other claims must be consistent with those claims allowed by the Code of Federal Regulations Title 21, Part 101, Subparts D, [~~and~~] E, and F.

(e) Certain sales by cottage food production operations prohibited or restricted.

(1) An operator may not sell any of the foods described in this section at wholesale.

(2) An operator may sell a food described in this section in this state through the internet or by mail-order only if:

(A) the consumer purchases the food through the internet or by mail-order from the operator and the operator personally delivers the food to the consumer; and

(B) subject to paragraph (3) of this subsection, before the operator accepts payment for the food, the operator provides all labeling information required by subsection (d) of this section to the consumer by:

(i) posting a legible statement on the cottage food production operation's internet website;

(ii) publishing the information in a catalog; or

(iii) otherwise communicating the information to the consumer.

(3) The operator that sells a food described by subsection (b)(3)(A) of this section in this state in the manner described by paragraph (2) of this subsection:

(A) is not required to include the address of the cottage food production operation in the labeling information required under subsection (d)(1)(A) of this section before the operator accepts payment for the food; and

(B) shall provide the address of the cottage food production operation on the label of the food in the manner required by subsection (d)(1)(A) of this section after the operator accepts payment for the food.

(f) Requirements for sale of certain cottage food products.

(1) An operator that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods shall:

(A) use a recipe that:

(i) is from a source approved by the department under paragraph (4) of this subsection;

(ii) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable product[~~,~~] or plant-based acidified canned good has an equilibrium pH value of 4.6 or less; or

(iii) is approved by a qualified process authority; or

(B) if the operation does not use a recipe described by subparagraph (A) of this paragraph, test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable[~~,~~] product[~~,~~] or plant-based acidified canned good has an equilibrium pH value of 4.6 or less.

(2) An operator may not sell to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified

canned goods before the operator complies with paragraph (1) of this subsection.

(3) For each batch of pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods, an operator must:

(A) label the batch with a unique number; and

(B) for a period of at least 12 months, keep a record that includes:

(i) the batch number;

(ii) the recipe used by the producer;

(iii) the source of the recipe or testing results as applicable; and

(iv) the date the batch was prepared.

(4) The department shall:

(A) approve sources for recipes that an operator may use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and

(B) semiannually post on the department's internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.

(5) This subsection does not apply to a pickled cucumber preserved in vinegar, brine, or similar solution.

(g) Requirements for the sale of frozen raw and uncut fruit or vegetables. An operator that sells to consumers frozen raw and uncut fruit or vegetables shall:

(1) store and deliver the frozen raw and uncut fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and

(2) label the frozen raw and uncut fruit or vegetables in accordance with subsection (d)(4) of this section.

(h) A cottage food production operation is not exempt from meeting the application of Texas Health and Safety Code, §431.045, Emergency Order; §431.0495, Recall Orders; and §431.247, Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health.

(i) Prohibition for Cottage Food Production Operations. A cottage food production operation may not sell TCS foods to customers.

(j) Production of Cottage Food Products - Basic Food Safety Education or Training Requirements.

(1) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Texas Health and Safety Code, Chapter 438, Subchapter D.

(2) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(A) meets the requirements of paragraph (1) of this subsection;

(B) is directly supervised by an individual described by paragraph (1) of this subsection; or

(C) is a member of the household in which the cottage food products are produced.

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

Filed with the Office of the Secretary of State on May 23, 2022.

TRD-202202002
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 231-5653

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SUBCHAPTER FF. FARMERS' MARKETS

25 TAC §§229.702 - 229.704

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The proposed amendments implement Texas Government Code, Chapter 531 and Texas Health and Safety Code, Chapters 437 and 1001.

§229.702. Definitions.

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

(1) Department--The Texas Department of State Health Services.

(2) Farmer--A person or entity that produces agricultural products by practice of the agricultural arts upon land that the person or entity controls.

(3) [~~(2)~~] Farmers' market--A designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers. A farmers' market must include vendors who meet the definition of "farmer" as defined in paragraph (2) of this section and may include vendors who meet the definition of "food producer" as defined in paragraph (6) of this section. [~~A designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers.~~]

(4) [~~(3)~~] Fish--As defined in the U.S. Food and Drug Administration Food Code 2017 (Food Code) §1-201.10(B) [~~§228.2 of this title (relating to Definitions)~~].

(5) [~~(4)~~] Food--An agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product for human consumption, in either its natural or processed state, that has been produced or processed or otherwise has had value added to the product in this state. The term includes:

(A) fish or other aquatic species;

(B) livestock, a livestock product, or livestock by-product;

(C) planting seed;

(D) poultry, a poultry product, or a poultry by-product;

(E) wildlife processed for food or by-products;

(F) a product made from a product described in this paragraph by a farmer or other producer who grew or processed the product; or

(G) produce.

(6) Food producer--A person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person is selling. The term does not include a person who only packaged or repackaged a food product.

(7) [~~(5)~~] Potable water--Drinking water.

(8) [~~(6)~~] Poultry--A live or dead domesticated bird.

(9) [~~(7)~~] Produce--Fresh fruit [~~fruits~~] or vegetables.

[~~(8) Producer--A person or entity that produces agricultural products by practice of the agricultural arts upon land that the person or entity controls.~~]

(10) [~~(9)~~] Sample--A bite-sized portion of food or foods offered free of charge to demonstrate its characteristics and does not include a whole meal, an individual portion, or a whole sandwich.

(11) [~~(10)~~] Time and temperature control for safety food (TCS food) [~~Time/Temperature Control for Safety (TCS) food--~~] (formerly Potentially Hazardous Food)--As defined in the Food Code §1-201.10(B) [~~§228.2 of this title~~].

§229.703. Permits.

The department or the local health department may issue a permit to a farmer or food producer [~~person~~] who sells food [~~potentially hazardous food (time/temperature control for safety food)~~] at a farmers' market. Regardless of what the permit is called, the following parameters from Texas Health and Safety Code §437.0065(c) apply. The permit:

(1) must be valid for a term of not less than one year;

(2) may impose an annual fee in an amount not to exceed $100.00 for issuance or renewal; and

(3) must cover sales at all farmers' markets, farm stands, and farms within the jurisdiction of the permitting authority.

§229.704. Temperature Requirements.

(a) TCS food [~~Potentially hazardous food (time/temperature control for safety food)~~] sold, distributed, or prepared on-site at a farmers' market, and TCS food [~~potentially hazardous food (time/temperature control for safety food)~~] transported to or from a farmers' market, shall meet the requirements of this section.

(b) Frozen food. Stored frozen foods shall be maintained frozen.

(c) Hot and cold holding. TCS food [~~All potentially hazardous food~~] sold at, prepared on site at, or transported to or from a farm or farmers' market [~~at all times~~] shall be maintained at:

(1) 5 degrees Celsius (41 degrees Fahrenheit) or below; or

(2) 54 degrees Celsius (135 degrees Fahrenheit) or above.

(d) Cooking of raw animal foods. Raw animal foods shall be cooked to heat all parts of the food to the following applicable temperatures:

(1) poultry, ground poultry, stuffing with poultry, meat, and fish to 74 degrees Celsius (165 degrees Fahrenheit) for < 1 second (instantaneous) [~~15 seconds~~];

(2) ground meat, ground pork, ground fish, and injected meats to 68 degrees Celsius (155 degrees [~~degree~~] Fahrenheit) for 17 [~~15~~] seconds;[~~)~~]

(3) beef, pork, meat, fish, and raw shell eggs for immediate service to 63 degrees Celsius (145 degrees Fahrenheit) for 15 seconds;

(4) prepackaged TCS food [~~, potentially hazardous food (time/temperature control for safety food),~~] that has been commercially processed[~~,~~] to 57 degrees [~~degree~~] Celsius (135 degrees Fahrenheit);

(5) a raw or undercooked whole-muscle, intact beef steak may be served if:

(A) the steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as defined in the Food Code §1-201.10(B) [~~§228.2 of this title (relating to Definitions)~~]; and [~~or~~]

(B) the steak is cooked on both the top and bottom to a surface temperature of 63 degrees Celsius (145 degrees Fahrenheit) or above and a cooked color change is achieved on all external surfaces; and [~~.~~]

(6) raw animal foods cooked in a microwave oven shall be:

(A) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(B) covered to retain surface moisture;

(C) heated to a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit) in all parts of the food; and

(D) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(e) Cooking fruit [~~fruits~~] and vegetables. Fruit [~~Fruits~~] and vegetables that are cooked shall be heated to a temperature of 57 degrees Celsius (135 degrees Fahrenheit).

(f) Eggs. A farmer or egg producer that sells eggs directly to the consumer at a farm or farmers' market shall maintain the eggs at an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) as specified in the Food Code §3-501.16(B) [~~§228.63 of this title (relating to Specifications for Receiving)~~].

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

Filed with the Office of the Secretary of State on May 23, 2022.

TRD-202202003
Cynthia Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 231-5653

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER C. TEXAS CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

26 TAC §§306.101, 306.103, 306.105, 306.107, 306.109, 306.111

The Texas Health and Human Services Commission (HHSC) proposes new §306.101, concerning Purpose; §306.103, concerning Application; §306.105, concerning Definitions; §306.107, concerning Certification Eligibility; §306.109, concerning Application Process; and §306.111, concerning Certification Standards.

BACKGROUND AND PURPOSE

The purpose of the proposal is to adopt existing certification, recertification, and certification maintenance requirements for Texas Certified Community Behavioral Health Clinics (T-CCBHCs). The proposal outlines requirements for T-CCBHCs serving persons with mental illness, severe emotional disturbances, and substance use disorders.

Certification requirements for Community Behavioral Health Clinics were mandated by a Substance Abuse and Mental Health Services Administration (SAMHSA) grant awarded to Texas in 2015. HHSC also recognized the CCBHC model as an emerging best practice and committed to increasing the number of CCBHCs to 19 as a goal in fiscal year 2020 in the Texas Health and Human Services Business Plan: Blueprint for a Healthy Texas. To date, the state has exceeded the goal and intends to certify all interested and qualified local mental health authorities and local behavioral health authorities as CCBHCs in addition to other interested qualified providers. As of November 2021, 250 counties are served by a T-CCBHC.

SECTION-BY-SECTION SUMMARY

Proposed new §306.101 describes the purpose of the subchapter.

Proposed new §306.103 establishes rule applicability to T-CCBHCs.

Proposed new §306.105 provides definitions for terminology used in the subchapter.

Proposed new §306.107 establishes Texas applicant certification eligibility criteria regarding staffing requirements, availability and accessibility of services, care coordination, scope of service, reporting, and organizational authority.

Proposed new §306.109 describes the T-CCBHC application process regarding application submittal, application denial criteria, documentation, and timeframe for submittal of requested supplemental information.

Proposed new §306.111 establishes Texas applicant certification standards including maintaining all required licenses and other parameters for T-CCBHC certification and recertification.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

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

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because current T-CCBHCs are already functioning in compliance with the proposed rules so there is no required change to current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner, Intellectual and Developmental Disability and Behavioral Health Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved understanding of existing T-CCBHC requirements currently contained in publicly available CCBHC program manuals and on the HHS website. In addition, while Texas no longer receives the SAMHSA grant award, HHSC continues to use the CCBHC framework as a model and SAMHSA may require grantees to be certified by the state as CCBHCs to receive certain federal awards.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street,

Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule "21R109" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Health and Safety Code Section 531.001(e), which requires HHSC to assist the local agencies and organizations providing mental health services by coordinating the implementation of a statewide system of mental health services, and Government Code §531.002(b)(2) which provides HHSC is the state agency with primary responsibility for ensuring the delivery of state health and human services in a manner that maximizes the use of federal, state, and local funds.

The new sections affect Texas Government Code §531.0055, Health and Safety Code Section 531.001(e), and §531.002(b)(2).

§306.101. Purpose.

The purpose of this subchapter is to describe the requirements for an applicant to be certified by the Texas Health and Human Services Commission as a Texas Certified Community Behavioral Health Clinic.

§306.103. Application.

The provisions of this subchapter apply to applicants defined in §306.105 of this subchapter (relating to Definitions).

§306.105. Definitions.

The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise:

(1) Applicant--An entity applying or reapplying for certification as a Texas Certified Community Behavioral Health Clinic (T-CCBHC).

(2) Application--A Texas Health and Human Services Commission form submitted by an applicant for T-CCBHC certification and recertification.

(3) Community needs assessment--A systematic approach to identifying community needs and determining program capacity to address the needs of the population being served. The needs assessment is objective and includes input from people receiving services, program staff, and other key community stakeholders.

(4) Crisis stabilization--Services to address a mental health or substance use crisis, including suicide crisis response and services capable of addressing crises related to substance use.

(5) Family-centered--Developmentally appropriate and youth guided care that recognizes active participation between families and caregivers and professionals as a cornerstone to the planning, delivery, and evaluation of services.

(6) Governmental entity--A state agency or a political subdivision of the state, such as a city, county, hospital district, hospital authority, or state entity.

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

(8) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Health and Safety Code, §533.0356(a).

(9) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Health and Safety Code, §533.035(a).

(10) Person--An individual receiving services under this subchapter.

(11) Person-centered--Care that is strengths-based, trauma informed, and focuses on individual capacities, preferences, and goals that gives the person the opportunity to optimize their self-defined quality of life, choice, control, and self-determination through meaningful exploration and discovery of unique preferences, needs, and wants while ensuring medical and non-medical needs are met via means that are exclusively for the benefit of the person and supports them to reach their full potential.

(12) T-CCBHC--Texas Certified Community Behavioral Health Clinic. An entity certified in accordance with this subchapter.

§306.107. Certification Eligibility.

An applicant must meet the criteria in this section for certification.

(1) Staffing requirements.

(A) Staffing plans must reflect findings of the community needs assessment.

(B) Staff members must have, and be currently active with, all necessary state-required licenses and accreditations to deliver required services.

(C) Staff members must be trained to serve the needs of the clinic's patient population as identified through the community needs assessment and in compliance with Section 223(a)(2)(A) of the Protecting Access to Medicare Act of 2014.

(D) Staff must be trained in a person-centered and family-centered approach.

(2) Availability and accessibility of services. The applicant cannot deny or limit services based on a person's inability to pay.

(3) Care coordination.

(A) The applicant must coordinate care across settings and providers to ensure seamless transitions for the person across the full spectrum of health services including acute, chronic, and behavioral health.

(B) The T-CCBHC must have a health information technology system that includes an electronic health record and must have a plan in place focusing on ways to improve care coordination using health information technology.

(4) Scope of services.

(A) The applicant must provide or, with HHSC approval, arrange for the provision of the following services:

(i) crisis mental health services, including 24-hour mobile crisis services, crisis intervention services, and safety monitoring;

(ii) screening, assessment, and diagnosis, including risk assessment;

(iii) person-centered treatment planning or similar processes, including risk assessment and crisis planning;

(iv) outpatient mental health and substance use services;

(v) outpatient clinic primary care screening and monitoring of key health indicators and health risk;

(vi) targeted case management as defined in 1 TAC, §353.1403;

(vii) psychiatric rehabilitation services;

(viii) peer specialist services and family partner supports; and

(ix) intensive, community-based mental health care for members of the armed forces and veterans.

(B) Crisis mental health services must be provided regardless of a person's place of residence, homelessness, or lack of a permanent address.

(5) Quality and other reporting.

(A) A T-CCBHC must report encounter data, clinical outcomes data, quality data, and other data HHSC requests.

(B) A T-CCBHC must have health information technology systems that allow reporting on data and quality measures.

(6) Organizational authority.

(A) The applicant must be a non-profit or governmental entity; or an entity operated under the authority of the Indian Health Service, an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*), or an urban Indian organization pursuant to a grant or contract with the Indian Health Service under title V of the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*).

(B) The applicant must be operational as an entity listed under subparagraph (A) of this paragraph for a minimum of two years in Texas before applying for T-CCBHC certification.

(C) The applicant's T-CCBHC must have a governing board. The governing board must:

(i) be comprised of at least 51 percent families, consumers, and people in recovery from behavioral health conditions; or

(ii) establish an advisory committee that meets the requirements of clause (i) of this subparagraph and provides meaningful input to the governing board about the T-CCBHC's polices, processes, and services.

§306.109. Application Process.

(a) An applicant must submit a completed HHSC application to be considered for certification or recertification using application information and instructions provided on the HHSC website.

(b) HHSC prioritizes review and approval of LMHA and LBHA T-CCBHC applications as appropriate.

(c) HHSC reviews an application in accordance with the T-CCBHC eligibility requirements in §306.107 of this subchapter (relating to Certification Eligibility) and may deny an application for certification for good cause, including:

(1) the application is incomplete in any aspect;

(2) the application is not submitted in accordance with HHSC's application instructions or published notice;

(3) the application contains false information;

(4) HHSC, any other agency in Texas or in another state, or federal agency has terminated the applicant's contract, licensure, or certification for cause at any point in the three years preceding the application submission date;

(5) the applicant is excluded or debarred from contracting with the State of Texas or the federal government;

(6) the applicant has an outstanding Medicaid program audit exception or other unresolved financial liability owed to the State of Texas;

(7) the applicant is ineligible to enroll as a Medicaid provider for reasons relating to criminal history records as set forth in state rules; or

(8) the applicant terminated a provider agreement in a federal health care program, as defined in 42 U.S.C, §1302a-7b(f), while an adverse action or sanction was in effect.

(d) An applicant must submit supporting documentation and participate in HHSC conducted interviews to confirm the applicant meets each criterion in §306.107 of this subchapter.

(e) Applicants must submit appropriate documentation in response to no more than two requests from HHSC for supplemental information within a timeframe agreed upon by the applicant and HHSC not to exceed 60 calendar days from the date of HHSC's first request.

§306.111. Certification Standards.

(a) In order to maintain certification, T-CCBHCs must coordinate with other T-CCBHCs that deliver services in the same geographic service area to ensure services are not duplicated for persons receiving services from more than one T-CCBHC.

(b) T-CCBHC certification does not replace Texas regulations regarding provision of services or contract requirements. T-CCBHCs must maintain all required licenses throughout the certification period. Any regulatory license revocations, of either facility or professional licenses, that result in a T-CCBHC being unable to operate within the State of Texas will preclude the T-CCBHC from continuing as certified.

(c) T-CCBHC certification is approved for three years, subject to parameters outlined in §306.109(c) of this subchapter (relating to Application Process).

(d) T-CCBHCs may reapply for certification if eligible in accordance with §306.109 of this subchapter.

(e) To ensure prevention of a lapse in certification, T-CCBHCs must submit an application, as defined in §306.105(2) of this subchapter (relating to Definitions), to be considered for recertification. Applications must be submitted no earlier than 180 calendar days before the expiration of certification, but not later than 60 calendar days before the expiration of certification.

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

Filed with the Office of the Secretary of State on May 24, 2022.

TRD-202202010

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 458-0775

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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 §3.340

The Comptroller of Public Accounts proposes amendments to §3.340, concerning qualified research. The comptroller amends this section to provide guidance regarding the research and development sales tax exemption.

The comptroller proposes to amend the definition of Internal Revenue Code (IRC) in subsection (a)(6) to explain which federal Treasury Regulations are applicable to the 2011 federal income tax year. The comptroller has reconsidered comments received during the 2021 rulemaking process and agrees that the adopted definition is too restrictive. The amended definition includes any Treasury Regulation that a taxpayer could have applied to the 2011 federal income tax year. The amended definition also includes specific examples of Treasury Regulations applicable to the 2011 federal income tax year.

The comptroller proposes to amend subsection (d)(5) to remove items that are inconsistent with the changes made to the definition of IRC. The comptroller reletters subparagraph (C) accordingly.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: 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 rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by improving the clarity and implementation of the section. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost 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, §151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation).

§3.340. Qualified Research.

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

(1) Business component--A business component is any product, process, computer software, technique, formula, or invention, which is to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer.

(2) Combined group--Taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a combined group report under Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business). For more information about combined groups, see §3.590 of this title (relating to Margin: Combined Reporting).

(3) Directly used in qualified research--Having an immediate use in qualified research activity, without an intervening or ancillary use.

(4) Four-Part Test--The test described in IRC, §41(d) (Qualified research defined) that determines whether research activities are qualified research. The four parts of the test are the Section 174 Test, the Discovering Technological Information Test, the Business Component Test, and the Process of Experimentation Test.

(5) Franchise tax research and development activities credit--A credit against franchise tax for qualified research activities that is allowed under Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

(6) Internal Revenue Code (IRC)--The Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations adopted under the code applicable to the tax year to which the provisions of the code in effect on that date applied. A regulation adopted after December 31, 2011 is only included in this term to the extent that [~~the regulation requires~~] a taxpayer could have applied [~~to apply~~] the regulation to the 2011 federal income tax year. Examples of treasury regulations included in this definition are:

(A) Treasury Regulation, §1.174-2 (Definition of research and experimental expenditures) as contained in 26 CFR part 1 (revised as of July 21, 2014);

(B) Treasury Regulation, §1.41-4 (Qualified research for expenditures paid or incurred in taxable years ending on or after December 31, 2003) as contained in 26 CFR part 1 (revised as of November 3, 2016), except for paragraph (c)(6) (Internal use software). For paragraph (c)(6), as provided in the last sentence of Treasury Regulation, §1.41-4 (e) (Effective/applicability dates), taxpayers may elect to follow either of the following versions of paragraph (c)(6):

(i) Treasury Regulation, §1.41-4(c)(6) (Internal-use computer software) as contained in 26 CFR part 1 (revised as of April 1, 2003) and IRB 2001-5; or

(ii) Proposed Treasury Regulation, §1.41-4(c)(6) (Internal use software for taxable years beginning on or after the December 31, 1985) as contained in IRB 2002-4.

(7) Qualified research--This term has the meaning given in IRC, §41(d), except that the research must be conducted in Texas. Qualified research activities must satisfy each part of the Four-Part Test.

(8) Registrant--A taxpayer who holds a Texas Qualified Research Registration Number issued by the comptroller.

(9) Registration number--The Texas Qualified Research Registration Number issued by the comptroller to a taxpayer who submits the Texas Registration for Qualified Research and Development Sales Tax Exemption form.

(10) Taxable entity--This term has the meaning given by Tax Code, §171.0002 (Definition of Taxable Entity).

(b) Depreciable tangible personal property used in qualified research.

(1) Subject to paragraph (2) of this subsection, the sale, storage, or use of tangible personal property is exempt from Texas sales and use tax if the property:

(A) has a useful life that exceeds one year;

(B) is subject to depreciation under:

(i) generally accepted accounting principles; or

(ii) IRC, §167 (Depreciation) or §168 (Accelerated cost recovery system); and

(C) is sold, leased, rented to, stored, or used by a taxpayer engaged in qualified research; and

(D) is directly used in qualified research. Depreciable tangible personal property is directly used in qualified research if it is used in the actual performance of activities that are part of the qualified research. For example, machinery, equipment, computers, software, tools, laboratory furniture such as desks, laboratory tables, stools, benches, and storage cabinets, and other tangible personal property used by personnel in the process of experimentation are directly used in qualified research. Tangible personal property is not directly used in qualified research if it is used in ancillary or support activities such as administration, maintenance, marketing, distribution, or transportation activities, or if it is used in activities excluded from qualified research. For example, machinery and equipment used by administrative, accounting, or clerical personnel are not directly used in qualified research.

(2) A taxpayer may not claim the exemption if that taxpayer will, as a taxable entity or as a member of a combined group, claim a franchise tax research and development activities credit on a franchise tax report based on the accounting period during which the depreciable tangible personal property used in qualified research would first be subject to Texas sales or use tax.

(3) A claim for a carryforward of an unused franchise tax research and development activities credit under Tax Code, §171.659 (Carryforward) does not affect a taxpayer's ability, as a taxable entity or as a member of a combined group, to claim the sales and use tax exemption provided by paragraph (1) of this subsection.

(4) Property satisfies paragraph (1)(B) of this subsection if it is subject to depreciation under generally accepted accounting principles, IRC, §167, or IRC, §168 even if the taxpayer does not actually depreciate that property.

(5) Property satisfies paragraph (1) of this subsection only if it is tangible personal property subject to depreciation at the time a taxpayer purchases it. For example, assume a taxpayer purchases tangible personal property that is not subject to depreciation. The taxpayer later incorporates that property into real property that is subject to depreciation. Although the real property with the incorporated tangible personal property is subject to depreciation, the tangible personal property, on its own, was never subject to depreciation. The tangible personal property does not satisfy paragraph (1) of this subsection because it was never subject to depreciation as tangible personal property.

(6) A taxpayer has the burden of establishing its entitlement to the exemption by clear and convincing evidence, including proof that the research activities meet the definition of qualified research and applying the shrink-back rule described in subsection (c)(3) of this section. All qualified research activities must be supported by contemporaneous business records.

(7) An Internal Revenue Service audit determination of eligibility for the federal research and development credit under IRC, §41 (Credit for increasing research activities), whether that determination is that the taxpayer qualifies or does not qualify for the federal research and development credit, is not binding on the comptroller's determination of eligibility for the exemption.

(c) Application of the Four-Part Test. Research activities must satisfy each part of the Four-Part Test, as described in paragraph (1) of this subsection, to be qualified research.

(1) Four-Part Test.

(A) Section 174 Test. Expenditures related to the research must be eligible to be treated as expenses under IRC, §174 (Research and experimental expenditures).

(i) Expenditures are eligible to be treated as expenses under IRC, §174, if the expenditures are incurred in connection with the taxpayer's trade or business and represent a research and development cost in the experimental or laboratory sense. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product.

(ii) For the purposes of this test, the term "product" includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

(iii) Expenditures for the following are not eligible to be treated as expenses under IRC, §174:

(I) land;

(II) depreciable property;

(III) the ordinary testing or inspection of materials or products for quality control;

(IV) efficiency surveys;

(V) management studies;

(VI) consumer surveys;

(VII) advertising or promotions;

(VIII) the acquisition of another's patent, model, production, or process; or

(IX) research in connection with literary, historical, or similar projects.

(iv) Although expenditures for depreciable property are not eligible to be treated as expenditures under IRC, §174, those expenditures qualify for the purposes of the sales tax research and development exemption, provided that the research activities otherwise satisfy the Four-Part Test and are not excluded under subsection (d) of this section.

(B) Discovering Technological Information Test. The research must be undertaken for the purpose of discovering information that is technological in nature.

(i) Research is undertaken for the purpose of discovering technological information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) In order to satisfy the requirement that the research is technological in nature, the process of experimentation used to discover information must fundamentally rely on principles of the physical or biological sciences, engineering, or computer science. A taxpayer may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(iii) A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxpayer:

(I) seek to obtain information that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxpayer is performing the research; or

(II) succeed in developing a new or improved business component.

(C) Business Component Test. The application of the technological information for which the research is undertaken must be intended to be useful in the development of a new or improved business component of the taxpayer, which may include any product, process, computer software, technique, formula, or invention that is to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer.

(i) If a taxpayer provides a service to a customer, the service provided to that customer is not a business component because a service is not a product, process, computer software, technique, formula, or invention. However, a product, process, computer software, technique, formula, or invention used by a taxpayer to provide services to its customers may be a business component.

(ii) A design is not a business component because a design is not a product, process, computer software, technique, formula, or invention. While uncertainty as to the appropriate design of a business component is a qualifying uncertainty for the Section 174 Test and the Discovering Technological information test, the design itself is not a business component. For example, the design of a structure is not a business component, although the structure itself may be a business component. Similarly, a blueprint or other plan used to construct a structure that embodies a design is not a business component.

(D) Process of Experimentation Test. Substantially all of the research activities must constitute elements of a process of experimentation for a qualified purpose. A process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability, or quality of a business component. Any research relating to style, taste, cosmetic, or seasonal design factors does not satisfy the Process of Experimentation Test.

(i) A process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities.

(ii) A process of experimentation must:

(I) be an evaluative process and generally should be capable of evaluating more than one alternative; and

(II) fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involve:

(-a-) the identification of uncertainty concerning the development or improvement of a business component;

(-b-) the identification of one or more alternatives intended to eliminate that uncertainty; and

(-c-) the identification and the conduct of a process of evaluating the alternatives through, for example, modeling, simulation, or a systematic trial and error methodology.

(iii) A taxpayer may undertake a process of experimentation if there is no uncertainty concerning the taxpayer's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxpayer's research activities. Uncertainty concerning the development or improvement of the business component (e.g., its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

(iv) The substantially all requirement of this subparagraph is satisfied only if 80% or more of a taxpayer's research activities, measured on a cost or other consistently applied reasonable basis constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality. The substantially all requirement is satisfied even if the remainder of a taxpayer's research activities with respect to the business component do not constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality.

(v) Non-experimental methods, such as simple trial and error, brainstorming, or reverse engineering, are not considered a process of experimentation.

(vi) The following are factors that may be considered in determining whether a trial and error methodology is experimental systematic trial and error or non-experimental simple trial and error. Evidence provided to determine the type of trial and error is not limited to these factors, nor is evidence of each factor required. These factors only apply to determining whether a process of experimentation is systematic trial and error. Systematic trial and error is not the only qualifying process of experimentation. These factors are:

(I) whether the person conducting the trial and error methodology stops testing alternatives once a single acceptable result is found or continues to find multiple acceptable results for comparison;

(II) whether all the results of the trial and error methodology are recorded for evaluation;

(III) whether there is a written procedure for conducting the trial and error methodology; and

(IV) whether there is a written procedure for evaluating the results of the trial and error methodology.

(vii) Examples.

(I) Example 1. A taxpayer is engaged in the business of developing and manufacturing widgets. The taxpayer wants to change the color of its blue widget to green. The taxpayer obtains several different shades of green paint from various suppliers. The taxpayer paints several sample widgets, and surveys its customers to determine which shade of green its customers prefer. The taxpayer's activities to change the color of its blue widget to green do not satisfy the Process of Experimentation Test because its activities are not undertaken for a qualified purpose. All of the taxpayer's research activities are related to style, taste, cosmetic, or seasonal design factors.

(II) Example 2. The taxpayer in Example 1 chooses one of the green paints. The taxpayer obtains samples of the green paint from a supplier and determines that it must modify its painting process to accommodate the green paint because the green paint has different characteristics from other paints it has used. The taxpayer obtains detailed data on the green paint from its paint supplier. The taxpayer also consults with the manufacturer of its paint spraying machines. The manufacturer informs the taxpayer that it must acquire new nozzles that operate with the green paint it wants to use because the current nozzles do not work with the green paint. The taxpayer tests the new nozzles, using the green paint, to ensure that they work as specified by the manufacturer of the paint spraying machines. The taxpayer's activities to modify its painting process are not qualified research. The taxpayer did not conduct a process of evaluating alternatives in order to eliminate uncertainty regarding the modification of its painting process. Rather, the manufacturer of the paint machines eliminated the taxpayer's uncertainty regarding the modification of its painting process. The taxpayer's activities to test the nozzles to determine if the nozzles work as specified by the manufacturer of the paint spraying machines are in the nature of routine or ordinary testing or inspection for quality control.

(III) Example 3. A taxpayer is engaged in the business of manufacturing food products and currently manufactures a large-shred version of a product. The taxpayer seeks to modify its current production line to permit it to manufacture both a large-shred version and a fine-shred version of one of its food products. A smaller, thinner shredding blade capable of producing a fine-shred version of the food product is not commercially available. Thus, the taxpayer must develop a new shredding blade that can be fitted onto its current production line. The taxpayer is uncertain concerning the design of the new shredding blade because the material used in its existing blade breaks when machined into smaller, thinner blades. The taxpayer engages in a systematic trial and error process of analyzing various blade designs and materials to determine whether the new shredding blade must be constructed of a different material from that of its existing shredding blade and, if so, what material will best meet its functional requirements. The taxpayer's activities to modify its current production line by developing the new shredding blade satisfy the Process of Experimentation Test. Substantially all of the taxpayer's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of the taxpayer's research activities. The taxpayer identified uncertainties related to the development of a business component, and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxpayer's process of evaluating identified alternatives was technological in nature and was undertaken to eliminate the uncertainties.

(IV) Example 4. A taxpayer is in the business of designing, developing and manufacturing automobiles. In response to government-mandated fuel economy requirements, the taxpayer seeks to update its current model vehicle and undertakes to improve aerodynamics by lowering the hood of its current model vehicle. The taxpayer determines, however, that lowering the hood changes the air flow under the hood, which changes the rate at which air enters the engine through the air intake system, which reduces the functionality of the cooling system. The taxpayer's engineers are uncertain how to design a lower hood to obtain the increased fuel economy, while maintaining the necessary air flow under the hood. The taxpayer designs, models, simulates, tests, refines, and re-tests several alternative designs for the hood and associated proposed modifications to both the air intake system and cooling system. This process enables the taxpayer to eliminate the uncertainties related to the integrated design of the hood, air intake system, and cooling system. Such activities constitute 85% of its total activities to update its current model vehicle. The taxpayer then engages in additional activities that do not involve a process of evaluating alternatives in order to eliminate uncertainties. The additional activities constitute only 15% of the taxpayer's total activities to update its current model vehicle. In this case substantially all of the taxpayer's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of its research activities. The taxpayer identified uncertainties related to the improvement of a business component and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxpayer's process of evaluating the identified alternatives was technological in nature and was undertaken to eliminate the uncertainties. Because 85% of the taxpayer's activities to update its current model vehicle constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality, all of its activities satisfy the Process of Experimentation Test.

(V) Example 5. A taxpayer is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. The taxpayer is engaged to construct a structure in a part of Texas where foundation problems are common. The taxpayer's engineers were uncertain how to design the structure to ensure stability of the structure's foundation because the taxpayer had never designed a structure in a similar location. The taxpayer's engineers used their professional experience and various building codes to determine how to design the foundation based on the conditions at the construction site. The engineers chose to use piles in the foundation. The taxpayer constructed a test pile on site to confirm whether this would work in the conditions present on the construction site. This test pile would become part of the foundation of the structure regardless of whether the engineers had to redesign the additional piles required for the foundation. The taxpayer's activities in using professional experience and business codes to design the foundation did not meet the Process of Experimentation Test because the activities did not resolve technological uncertainties through an experimental process. Constructing the test pile also did not meet the Process of Experimentation Test because it was not an evaluative process.

(VI) Example 6. A taxpayer is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. For one of its projects to construct an office building, the taxpayer was uncertain how to design the layout of the electrical systems. The taxpayer's employees held on-site meetings to discuss different options, such as running the wire under the floor or through the ceiling, but did not actually experiment by installing wire in different locations. The taxpayer used computer-aided simulation and modeling

to produce the final electrical system layout. While in some cases computer-aided simulation and modeling may be an experimental process, in this case, it was not an experimental process because the taxpayer did not use the computer-aided simulation and modeling to evaluate different alternatives in a scientific manner. The taxpayer's activities did not satisfy the Process of Experimentation Test because it did not conduct an experimental process of evaluating alternatives to eliminate a technological uncertainty.

(VII) Example 7. A taxpayer is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxpayer decided to use horizontal drilling in this area, but it had never drilled a horizontal well and was uncertain how to successfully execute the horizontal drilling. At the time the taxpayer began horizontal drilling, the technology to drill horizontal wells was established. The taxpayer selected technology from existing commercially available options to use in its horizontal drilling program. The taxpayer's activities did not satisfy the Process of Experimentation Test because evaluating commercially available options does not constitute a process of experimentation.

(VIII) Example 8. A taxpayer is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxpayer decided to use horizontal drilling in this area. The taxpayer had drilled a horizontal well before in a different formation and at different depths. However, it had never drilled a horizontal well in this formation or at the required depths and was uncertain how to successfully execute the horizontal drilling. The taxpayer utilized its existing technology to perform its horizontal drilling operations in this area and the existing technology was successful. The taxpayer's activities did not satisfy the Process of Experimentation Test because the taxpayer merely used its existing technology and did not perform any experimentation to evaluate alternative any drilling methods.

(IX) Example 9. A taxpayer sought to discover cancer immunotherapies. The taxpayer was uncertain as to the appropriate design of the proteins to be used as a drug candidate. The taxpayer identified several alternative protein constructs and used a process to test them. The taxpayer's process involved testing the constructs using in vitro functional assays and binding assays, and either modifying the designs or discarding them and repeating the previous steps. The taxpayer took the resulting products from the in vitro testing and tested the drug candidate in living organisms. This process evaluated the various alternatives identified by the taxpayer. The taxpayer's activities satisfied the Process of Experimentation Test.

(2) Application of the Four-Part Test to business components. The Four-Part Test is applied separately to each business component of the taxpayer. Any plant process, machinery, or technique for commercial production of a business component is treated as a separate business component from the business component being produced.

(3) Shrink-back rule. The Four-Part Test is first applied at the level of the discrete business component used by the taxpayer in a trade or business of the taxpayer. If the requirements of the Four-Part Test are not met at that level, then they are applied at the next most significant subset of elements of the business component. This shrinking back of the product continues until either a subset of elements of the product that satisfies the requirements of the Four-Part Test is reached, or the most basic element of the product is reached and such element fails to satisfy any part of the Four-Part Test.

(4) Software development as qualified research. In determining if software development activities constitute qualified research, the comptroller shall consider the facts and circumstances of each activity.

(A) Application of Four-Part Test to software development activities.

(i) A taxpayer must prove that a software development activity is qualified research and meets all the requirements of the Four-Part Test under paragraph (1) of this subsection, even if the activity is likely to qualify as described in subparagraph (B) of this paragraph.

(ii) A taxpayer may prove that a software development activity described as unlikely to qualify in subparagraph (C) of this paragraph, is qualified research by providing evidence that the activity meets all the requirements of the Four-Part Test under paragraph (1) of this subsection.

(B) Software development activities likely to qualify. Types of activities likely to qualify include, but are not limited to:

(i) developing the initial release of an application software product that includes new constructs, such as new architectures, new algorithms, or new database management techniques;

(ii) developing system software, such as operating systems and compilers;

(iii) developing specialized technologies, such as image processing, artificial intelligence, or speech recognition; and

(iv) developing software as part of a hardware product where the software interacts directly with that hardware in order to make the hardware/software package function as a unit.

(C) Software development activities unlikely to qualify. Types of activities unlikely to qualify include, but are not limited to:

(i) maintaining existing software applications or products;

(ii) configuring purchased software applications;

(iii) reverse engineering of existing applications;

(iv) performing studies, or similar activities, to select vendor products;

(v) detecting flaws and bugs directed toward the verification and validation that the software was programmed as intended and works correctly;

(vi) modifying an existing software business component to make use of new or existing standards or devices, or to be compliant with another vendor's product or platform;

(vii) developing a business component that is substantially similar in technology, functionality, and features to the capabilities already in existence at other companies;

(viii) upgrading to newer versions of hardware or software or installing vendor-fix releases;

(ix) re-hosting or porting an application to a new hardware such as from mainframe to PC, or software platform, such as Windows to UNIX, or rewriting an existing application in a new language, such as rewriting a COBOL mainframe application in C++;

(x) writing hardware device drivers to support new hardware, such as disks, scanners, printers, or modems;

(xi) performing data quality, data cleansing, and data consistency activities, such as designing and implementing software to validate data fields, clean data fields, or make the data fields consistent across databases and applications;

(xii) bundling existing individual software products into product suites, such as combining existing word processor, spreadsheet, and slide presentation software applications into a single suite;

(xiii) expanding product lines by purchasing other products;

(xiv) developing interfaces between different software applications;

(xv) developing vendor product extensions;

(xvi) designing graphic user interfaces;

(xvii) developing functional enhancements to existing software applications/products;

(xviii) developing software as an embedded application, such as in cell phones, automobiles, and airplanes;

(xix) developing software utility programs, such as debuggers, backup systems, performance analyzers, and data recovery;

(xx) changing from a product based on one technology to a product based on a different or newer technology; and

(xxi) adapting and commercializing technology developed by a consortium or open software group.

(d) Excluded research activities. Qualified research does not include the activities described in this subsection.

(1) Research after commercial production. Any research conducted after the beginning of commercial production of the business component.

(A) Activities are conducted after the beginning of commercial production of a business component if such activities are conducted after the component is developed to the point where it is ready for commercial sale or use or meets the basic functional and economic requirements of the taxpayer for the component's sale or use.

(B) The following activities are deemed to occur after the beginning of commercial production of a business component:

(i) preproduction planning for a finished business component;

(ii) tooling-up for production;

(iii) trial production runs;

(iv) troubleshooting involving detecting faults in production equipment or processes;

(v) accumulating data relating to production processes;

(vi) debugging flaws in a business component; and

(vii) any activities that involve the use of an item for which the taxpayer claimed the manufacturing exemption under Tax Code, §151.318.

(C) In cases involving development of both a product and a manufacturing or other commercial production process for the product, the research after commercial production exclusion applies separately for the activities relating to the development of the product and the activities relating to the development of the process. For example, even after a product meets the taxpayer's basic functional and economic requirements, activities relating to the development of the manufacturing process may still constitute qualified research, provided that the development of the process itself separately satisfies the requirements of this section, and the activities are conducted before the process meets the taxpayer's basic functional and economic requirements or is ready for commercial use.

(D) Clinical testing of a pharmaceutical product prior to its commercial production in the United States is not treated as occurring after the beginning of commercial production even if the product is commercially available in other countries. Additional clinical testing of a pharmaceutical product after a product has been approved for a specific therapeutic use by the Food and Drug Administration and is ready for commercial production and sale is not treated as occurring after the beginning of commercial production if such clinical testing is undertaken to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms for the product. A functional use, characteristic, indication, combination, dosage, or delivery form shall be considered new only if such functional use, characteristic, indication, combination, dosage, or delivery form must be approved by the Food and Drug Administration.

(E) Examples.

(i) Example 1. A taxpayer is a tire manufacturer and develops a new material to use in its tires. The taxpayer conducts research to determine the changes that will be necessary for it to modify its existing manufacturing processes to manufacture the new tire. The taxpayer determines that the new tire material retains heat for a longer period of time than the materials it currently uses for tires, and, as a result, the new tire material adheres to the manufacturing equipment during tread cooling. The taxpayer evaluates several alternatives for processing the treads at cooler temperatures to address this problem, including a new type of belt for its manufacturing equipment to be used in tread cooling. Such a belt is not commercially available. Because the taxpayer is uncertain of the belt design, it develops and conducts sophisticated engineering tests on several alternative designs for a new type of belt to be used in tread cooling until it successfully achieves a design that meets its requirements. The taxpayer then manufactures a set of belts for its production equipment, installs the belts, and tests the belts to make sure they were manufactured correctly. The taxpayer's research with respect to the design of the new belts to be used in its manufacturing of the new tire may be qualified research under the Four-Part Test. However, the taxpayer's expenses to implement the new belts, including the costs to manufacture, install, and test the belts were incurred after the belts met the taxpayer's functional and economic requirements and are excluded as research after commercial production.

(ii) Example 2. For several years, a taxpayer has manufactured and sold a particular kind of widget. The taxpayer initiates a new research project to develop a new or improved widget. The taxpayer's activities to develop a new or improved widget are not excluded from the definition of qualified research under this paragraph. The taxpayer's activities relating to the development of a new or improved widget constitute a new research project to develop a new business component and are not considered activities conducted after the beginning of commercial production.

(iii) Example 3. For the purposes of this example, assume that the taxpayer's development of its products and manufacturing processes satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxpayer is a manufacturer of integrated circuits for use in specific applications. The taxpayer develops various integrated circuit devices and associated manufacturing processes. The taxable entity assembles various product configurations for testing. After an internal process of testing, the taxpayer delivers a sample quantity of the integrated circuit to a potential customer for further testing. At the time when the samples are delivered to the taxpayer's potential customer, the potential customer has not agreed to purchase any integrated circuits from the

taxpayer. This process of testing by both the taxpayer and its potential customer continues until an acceptable product and manufacturing process to produce the product is achieved. At that point, the taxpayer and the potential customer enter an agreement for the delivery of an order of the integrated circuits. In some cases, no acceptable product or manufacturing process is achieved, and no agreement is reached with the potential customer. Research activities occurring prior to an agreement are not considered activities conducted after the beginning of commercial production because the integrated circuits were not yet ready for commercial use. Any research that occurs after an agreement is reached are excluded as activities conducted after the beginning of commercial production because the integrated circuits were ready for commercial use once the product and associated manufacturing process was accepted by the potential customer.

(2) Adaptation of existing business components. Activities relating to adapting an existing business component to a particular customer's requirement or need. This exclusion does not apply merely because a business component is intended for a specific customer. For example:

(A) Example 1. A taxpayer is a computer software development firm and owns a general ledger accounting software core program that it markets and licenses to customers. The taxpayer incurs expenditures in adapting the core software program to the requirements of one of its customers. Because the taxpayer's activities represent activities to adapt an existing software program to a particular customer's requirement or need, its activities are excluded from the definition of qualified research under this paragraph.

(B) Example 2. Assume that the customer from Example 1 pays the taxpayer to adapt the core software program to the customer's requirements. Because the taxpayer's activities are excluded from the definition of qualified research, the customer's payments to the taxpayer are not for qualified research and are not considered to be contract research expenses.

(C) Example 3. Assume that the customer from Example 1 uses its own employees to adapt the core software program to its requirements. Because the customer's employees' activities to adapt the core software program to its requirements are excluded from the definition of qualified research, the wages the customer paid to its employees do not constitute in-house research expenses.

(D) Example 4. A taxpayer manufactures and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to extensive, complex testing in the scientific or laboratory sense. A customer orders passenger rail cars from the taxpayer. The customer's rail car requirements differ from those of the taxpayer's other existing customers only in that the customer wants fewer seats in its passenger cars and a higher quality seating material and carpet that are commercially available. The taxpayer manufactures rail cars meeting the customer's requirements. The rail car sold to the customer was not a new business component, but merely an adaptation of an existing business component that did not require a process of experimentation. Thus, the taxpayer's activities to manufacture rail cars for the customer are excluded from the definition of qualified research because the taxpayer's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

(E) Example 5. A taxpayer is a manufacturer and undertakes to create a manufacturing process for a new valve design. The taxpayer determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. Such robotic equipment is not commercially available. Therefore, the taxpayer purchases existing robotic equipment for the purpose of modifying it to meet its needs. The taxpayer's engineers identify uncertainty that is technological in nature concerning how to modify the existing robotic equipment to meet its needs. The taxpayer's engineers develop several alternative designs, conduct experiments using modeling and simulation in modifying the robotic equipment, and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, the taxpayer' s engineers develop a design for the robotic equipment that meets its needs. The taxpayer constructs and installs the modified robotic equipment on its manufacturing process. The taxpayer's research activities to determine how to modify the robotic equipment it purchased for its manufacturing process are not considered an adaptation of an existing business component.

(F) Example 6. A taxpayer is an oil and gas operator and has been engaged in horizontal drilling for the past ten years. Recently, the taxpayer was hired by a customer to drill in a formation. The drilling objectives included targeting an interval within that formation for horizontal drilling. The taxpayer was uncertain about the successful execution of the horizontal drilling because it had not previously drilled a horizontal well in that formation. The taxpayer was also uncertain about the economic results from the targeted interval. The taxpayer drilled several horizontal wells before its customer was satisfied with the economic results. The taxpayer modified its existing horizontal drilling program based on these results. The taxpayer's activities to identify a horizontal drilling process are excluded from the definition of qualified research because the activities consisted of adapting an existing business component, its existing horizontal drilling process, and did not involve creating a new or improved business component.

(G) Example 7. For the purposes of this example, assume that the taxpayer's development of its products satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxpayer is a manufacturer of rigid plastic containers. The taxpayer contracts with major food and beverage manufacturers to provide suitable bottle and packaging designs. The products designed by the taxpayer may be for repeat customers and the sizes and types of bottle may be similar to previous products. The development of each new product, and the production process necessary to produce the products at sufficient production volume, starts from new concept drawings developed by engineers. The taxpayer uses a qualifying process of experimentation to evaluate alternative concepts for the product and production processes. The taxpayer's activities related to both the product and the production process are not excluded from the definition of qualified research as an adaptation of an existing business component.

(3) Duplication of existing business component. Any research related to the reproduction of an existing business component, in whole or in part, from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component. This exclusion does not apply merely because the taxpayer examines an existing business component in the course of developing its own business component.

(4) Surveys, studies, etc. Any efficiency survey; activity relating to management function or technique; market research, testing or development (including advertising or promotions); routine data collection; or routine or ordinary testing or inspection for quality control.

(5) Computer software. Any research activities with respect to internal use software.

(A) For the purposes of this paragraph, internal use software is computer software developed by, or for the benefit of, the taxpayer primarily for internal use by the taxpayer. [~~A taxpayer uses soft-~~

~~ware internally if the software was developed for use in the operation of the business. Computer software that is developed to be commercially sold, leased, licensed, or otherwise marketed for separately stated consideration to unrelated third parties is not internal use software.~~]

[~~(B) Software developed by a taxpayer primarily for internal use by an entity that is part of an affiliated group to which the taxpayer also belongs shall be considered internal use software for purposes of this paragraph.~~]

(B) [~~(C)~~] This exclusion does not apply to software used in:

(i) an activity that constitutes qualified research, or

(ii) a production process that meets the requirements of the Four-Part Test.

[~~(D) The determination as to whether software is internal use software depends on the facts and circumstances existing at the beginning of the development of the software.~~]

(6) Social sciences, etc. Any research in the social sciences, arts, or humanities.

(7) Funded research. Any research funded by any grant, contract, or otherwise by another person or governmental entity.

(A) Research is considered funded if:

(i) the taxpayer performing the research for another person retains no substantial rights to the results of the research; or

(ii) the payments to the researcher are not contingent upon the success of the research.

(B) For the purposes of determining whether a taxpayer retains substantial rights to the results of the research:

(i) Incidental benefits to the researcher from the performance of the research do not constitute substantial rights. For example, increased experience in a field of research is not considered substantial rights.

(ii) A taxpayer does not retain substantial rights in the research it performs if the taxpayer must pay for the right to use the results of the research.

(C) If a taxpayer performing research does not retain substantial rights to the results of the research, the research is considered funded regardless of whether the payments to the researcher are contingent upon the success of the research. In this case, all research activities are considered funded even if the researcher has expenses that exceed the amount received by the researcher for the research.

(D) If a taxpayer performing research does retain substantial rights to the results of the research and the research is considered funded under subparagraph (A)(ii) of this paragraph, the research is only funded to the extent of the payments and fair market value of any property that the taxpayer becomes entitled to by performing the research. If the expenses related to the research exceed the amount the researcher is entitled to receive, the research is not considered funded with respect to the excess expenses. For example, a taxpayer performs research for another person. Based on the contract, the research activities are considered funded under subparagraph (A)(ii) of this paragraph because payments to the researcher are not contingent on the success of the research. The taxpayer retains substantial rights to the results of the research. The taxpayer is entitled to $100,000 under the contract but spent $120,000 on the research activities. In this case, the research is considered funded with respect to $100,000 and is not considered funded with respect to $20,000.

(E) A taxpayer performing research for another person must identify any other person paying for the research activities and any person with substantial rights to the results of the research.

(F) All agreements, not only research contracts, entered into between the taxpayer performing the research and the party funding the research shall be considered in determining the extent to which the research is funded.

(G) The provisions of this paragraph shall be applied separately to each research project undertaken by the taxpayer.

(e) Texas Qualified Research and Development Exemption Registration. In order to claim an exemption under this section, a taxpayer must first register with the comptroller and obtain a registration number.

(1) Registration procedure. To obtain a registration number, a taxpayer must complete Form AP-234, Texas Registration for Qualified Research and Development Sales Tax Exemption, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(A) The taxpayer requesting the registration number must certify that it will not, as a taxable entity or as a member of a combined group, claim a franchise tax research and development activities credit on a franchise tax report based on an accounting period during which it claims an exemption under subsection (b) of this section.

(B) The taxpayer requesting the registration number must provide all data and information required by the comptroller to administer the exemption and comply with Tax Code, §151.3182(c) (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation).

(2) Retroactive registration. A taxpayer may request that a registration number be given retroactive effect.

(A) A taxpayer may request that a registration number have retroactive effect by following the procedures required under paragraph (1) of this subsection and by completing an annual information report, described in paragraph (3) of this subsection, for each prior year for which the registration number is to be effective.

(B) The registration number may be made retroactive to the later of January 1, 2014, or a date requested by a registrant that is no more than four years prior to the date the registration is received, if the date requested is not within an accounting period during which the registrant, as a taxable entity or as a member of a combined group, claimed the franchise tax research and development activities credit.

(C) A registrant who is issued a retroactive registration number may file a claim for refund of Texas sales and use tax paid on purchases made on or after the later of January 1, 2014, or the effective date of the registration number, that qualify for exemption under subsection (b) of this section, in accordance with the requirements of §3.325 of this title (relating to Refunds and Payments Under Protest).

(D) A claim for a carryforward of an unused franchise tax research and development activities credit under Tax Code, §171.659 does not affect a taxpayer's ability, as a taxable entity or as a member of a combined group, to request a retroactive registration.

(3) Annual information report. A registrant must submit an annual information report for each calendar year its registration number is effective, irrespective of the date on which the original registration occurred.

(A) The registrant must provide all data and information required by the comptroller to administer the exemption and comply with Tax Code, §151.3182(c).

(B) The annual information report must be submitted electronically unless the comptroller issues a waiver. A registrant who cannot comply with this requirement due to hardship, impracticality, or other valid reason must submit a written request to the comptroller for a waiver of the requirement.

(C) The due date for the annual information report for the preceding calendar year is March 31. If March 31 falls on a Saturday, Sunday, or a legal holiday, the due date is the next business day.

(i) An annual information report filed electronically must be completed and submitted by 11:59 p.m. central time on the due date to be considered timely.

(ii) Reports submitted on paper must be postmarked on or before the due date to be considered timely.

(D) A registrant who fails to timely file an annual information report for its registration number will be given written notice of the failure to file. If an annual information report is not submitted within 60 days of the date of the notice of failure to file, the registration number will be cancelled by the comptroller in accordance with paragraph (5) of this subsection.

(4) Direct payment permit holders. A direct payment permit holder must obtain a registration number as required by paragraph (1) of this subsection in order to claim an exemption under this section. A direct payment permit holder with a registration number must file an annual information report for each year the number is effective as required by paragraph (3) of this subsection.

(5) Cancellation of registration number by the comptroller. The comptroller will cancel the registration number of a registrant who fails to comply with the provisions of this section. For example, the comptroller may cancel the registration number of a registrant who fails to file an annual information report or who claims the franchise tax research and development activities credit without first cancelling its registration number, as required by paragraph (8) of this subsection. The comptroller shall give written notice of the cancellation to the registrant. The notice may be personally served on the registrant or sent by regular mail to the registrant's address as shown in the comptroller's records. The former registrant may not claim an exemption under this section during the period when the registration number is cancelled. A former registrant that purchases an item under a cancelled registration number may be subject to a criminal penalty under Tax Code, §151.707 (Resale or Exemption Certificate; Criminal Penalty) and §3.287(d)(3) of this title (relating to Exemption Certificates).

(6) Effective date of cancellation. A registrant whose registration number is cancelled by the comptroller is responsible for remitting Texas sales and use tax, and penalty and interest from the date of purchase, on any items purchased tax-free pursuant to Tax Code, §151.3182 on or after the effective date of cancellation. In the case of a registrant whose registration number is cancelled because of a failure to file an annual information report, the effective date of the cancellation is December 31 of the last year for which the registrant filed an annual information report. In the case of a registrant whose registration number is cancelled because the registrant, as a taxable entity or as a member of a combined group, claimed the franchise tax research and development activities credit, the effective date of cancellation is the beginning date of the accounting period covered by the franchise tax report on which the credit was claimed.

(7) Reinstatement following cancellation. A former registrant who has had its registration number cancelled by the comptroller may submit a request in writing to have the registration number reinstated.

(A) A former registrant whose registration number has been cancelled may request reinstatement of the number be given retroactive effect. The registrant must file an annual information report for each prior year for which the registration number is to be effective.

(B) A registration number will not be reinstated for periods during which the former registrant is not eligible for the exemption under this section.

(C) Before the comptroller will reinstate a registration number, the former registrant must remit any Texas sales and use taxes, as well as applicable penalties and interest from the date of purchase, on all purchases made tax-free under this section during periods when the registrant was not eligible for the exemption under this section.

(8) Cancellation of registration number by registrant. A registrant who has received a registration number and subsequently chooses to claim the franchise tax research and development activities credit must cancel the registration number. The registrant is responsible for remitting Texas sales and use tax, and penalty and interest from the date of purchase, on any items purchased tax-free under this section during any accounting periods covered by a franchise tax report on which the credit is claimed.

(f) Texas Qualified Research Sales and Use Tax Exemption Certificate. Beginning January 1, 2014, a retailer may accept a valid and complete Form 01-931, Texas Qualified Research Sales and Use Tax Exemption Certificate or any form promulgated by the comptroller or that succeeds such form, in lieu of Texas sales and use tax on the sale of depreciable tangible personal property that qualifies for exemption under subsection (b) of this section. To be valid and complete, a Texas Qualified Research Sales and Use Tax Exemption Certificate must bear the registration number issued to the registrant by the comptroller and must be signed by the registrant or the registrant's authorized agent. Texas Qualified Research Sales and Use Tax Exemption Certificates are subject to the requirements of §3.287(d) of this title. A retailer must maintain a copy of the Texas Qualified Research Sales and Use Tax Exemption Certificate accepted in lieu of tax on a sale and all records supporting that transaction. Refer to §3.281 of this title (relating to Records Required; Information Required).

(g) Divergent use. When a registrant uses an item purchased under a valid Texas Qualified Research Sales and Use Tax Exemption Certificate in a taxable manner, the registrant is liable for payment of Texas sales and use tax, plus penalty and interest as applicable, based on the fair market rental value of the tangible personal property for the period of time used in the taxable manner. This subsection applies to an item that is used for any purpose other than for use in qualified research, whether that use occurs before, during, or after the time when the item is used in qualified research. Refer to Tax Code, §151.155 (Exemption Certificate).

(h) Refund of Texas sales and use tax paid on depreciable tangible personal property used in qualified research. A registrant with a valid registration number may file a claim for refund of Texas sales and use tax paid on purchases made on or after the later of January 1, 2014, or the effective date of the registration number, that qualify for exemption under subsection (b) of this section in accordance with the requirements of §3.325 of this title.

(i) Effective dates.

(1) The provisions of this section apply to the sale, storage, or use of tangible personal property occurring on or after January 1, 2014.

(2) The sales and use tax exemption for depreciable tangible personal property used in qualified research expires on December 31, 2026.

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

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TRD-202202019
Jennifer Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 475-2220

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.599

The Comptroller of Public Accounts proposes amendments to §3.599, concerning margin: research and development activities credit. The comptroller amends this section to provide guidance regarding the franchise tax research and development activities credit.

The comptroller proposes to amend the definition of Internal Revenue Code (IRC) in subsection (b)(5) to explain which federal Treasury Regulations are applicable to the 2011 federal income tax year. The comptroller has reconsidered comments received during the 2021 rulemaking process and agrees that the adopted definition is too restrictive. The amended definition includes any Treasury Regulation that a taxable entity could have applied to the 2011 federal income tax year. The amended definition also includes specific examples of Treasury Regulations applicable to the 2011 federal income tax year.

The comptroller proposes to amend subsection (d)(5) to remove items that are inconsistent with the changes made to the definition of IRC. The comptroller reletters subparagraph (C) accordingly.

The comptroller reorganizes subsection (i)(1) and (2) for readability and amends the language moved from paragraph (2) to paragraph (1) to explain that the combined group is the taxable entity for the purposes of calculating and reporting the credit.

The comptroller revises paragraph (3) to remove the current text restricting credit carryforwards and describes how to determine the credit carryforward when the membership of a combined group changes.

The comptroller proposes to amend subsection (m) by explaining that the conveyance, assignment, or transfer of an ownership interest in the taxable entity is not a conveyance, assignment, or transfer of the credit by the taxable entity.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: 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 rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by improving the clarity and implementation of the section. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost 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, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

§3.599. Margin: Research and Development Activities Credit.

(a) Effective dates.

(1) The provisions of this section apply to franchise tax reports originally due on or after January 1, 2014.

(2) These provisions expire on December 31, 2026. The credits allowed under this section cannot be established on a report originally due after December 31, 2026. The expiration does not affect the carryforward of a credit authorized under these provisions as provided in subsection (l) of this section and established on a report originally due prior to the expiration date of these provisions.

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

(1) Business component--A business component is any product, process, computer software, technique, formula, or invention, which is to be held for sale, lease, or license, or used by the taxable entity in a trade or business of the taxable entity.

(2) Combined group--Taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a combined group report under Tax Code, §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(3) Controlling interest--

(A) For a corporation, either more than 50%, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50%, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation.

(B) For a partnership, association, trust, or other entity other than a limited liability company, more than 50%, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(C) For a limited liability company, either more than 50%, owned directly or indirectly, of the total membership interest of the limited liability company or more than 50%, owned directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(4) Four-Part Test--The test described in IRC, §41(d) (Qualified research defined) that determines whether research activities are qualified research. The four parts of the test are the Section 174 Test, the Discovering Technological Information Test, the Business Component Test, and the Process of Experimentation Test.

(5) Internal Revenue Code (IRC)--The Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations that are later adopted under that code applicable to the tax year to which the provisions of the code in effect on that date applied. A regulation adopted after December 31, 2011 is only included in this term to the extent that [~~the regulation requires~~] a taxable entity could have applied [~~to apply~~] the regulation to the 2011 federal income tax year. Examples of treasury regulations included in this definition are:

(A) Treasury Regulation, §1.174-2 (Definition of research and experimental expenditures) as contained in 26 CFR part 1 (revised as of July 21, 2014);

(B) Treasury Regulation, §1.41-4 (Qualified research for expenditures paid or incurred in taxable years ending on or after December 31, 2003) as contained in 26 CFR part 1 (revised as of November 3, 2016), except for paragraph (c)(6) (Internal use software). For paragraph (c)(6), as provided in the last sentence of Treasury Regulation, §1.41-4 (e) (Effective/applicability dates), taxable entities may elect to follow either of the following versions of paragraph (c)(6):

(i) Treasury Regulation, §1.41-4(c)(6) (Internal-use computer software) as contained in 26 CFR part 1 (revised as of April 1, 2003) and IRB 2001-5; or

(ii) Proposed Treasury Regulation, §1.41-4(c)(6) (Internal use software for taxable years beginning on or after the December 31, 1985) as contained in IRB 2002-4.

(6) Public or private institution of higher education--

(A) an institution of higher education, as defined by Education Code, §61.003 (Definitions); or

(B) a private or independent institution of higher education, as defined by Education Code, §61.003.

(7) Qualified research--This term has the meaning given in IRC, §41(d), except that the research must be conducted in Texas. Qualified research activities must satisfy each part of the Four-Part Test.

(8) Qualified research expense--This term has the meaning given in IRC, §41(b) (Qualified research expenses), except that the expense must be for qualified research conducted in Texas. IRC, §41(b) defines qualified research expenses as the sum of in-house research expenses and contract research expenses.

(A) In-house research expenses include any wages paid or incurred for qualified services performed by an employee; any amount paid or incurred for supplies used in the conduct of qualified research; and any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

(i) Qualified services include an employee either engaging in qualified research or engaging in the direct supervision or direct support of qualified research.

(I) For the purposes of this clause, the term "engaging in qualified research" means the actual conduct of qualified research. For example, a scientist conducting laboratory experiments could be engaging in qualified research.

(II) For the purposes of this clause, the term "direct supervision" means the immediate supervision (first-line management) of qualified research. For example, a research scientist who directly supervises laboratory experiments, but who may not actually perform experiments, could be directly supervising qualified research. "Direct supervision" does not include supervision by a higher-level manager to whom first-line managers report, even if that manager is a qualified research scientist.

(III) For the purposes of this clause, the term "direct support" means services in the direct support of either: Persons engaging in actual conduct of qualified research, or persons who are directly supervising persons engaging in the actual conduct of qualified research.

(-a-) Direct support of research includes, but is not limited to, the services of: a secretary for typing reports describing laboratory results derived from qualified research; a laboratory worker for cleaning equipment used in qualified research; a clerk for compiling research data; and a machinist for machining a part of an experimental model used in qualified research.

(-b-) Direct support of research activities does not include general administrative services, or other services only indirectly of benefit to research activities. For example, services of: payroll personnel in preparing salary checks of laboratory scientists; an accountant for accounting for research expenses; a janitor for general cleaning of a research laboratory; or officers engaged in supervising financial or personnel matters do not qualify as direct support of research. This is true whether general administrative personnel are part of the research department or in a separate department.

(-c-) Direct support does not include supervision. Supervisory services constitute "qualified services" only to the extent provided in subclause (II) of this clause.

(ii) Supplies are any tangible property other than land, improvements to land, or property of a character subject to the allowance for depreciation.

(iii) If a taxable entity claimed a sales or use tax exemption under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) when it purchased a taxable item, and that exemption is for a use other than use in qualified research, the item is excluded from being an in-house research expense, even if it otherwise meets the definition of supplies in clause (ii) of this subparagraph. Exemptions or exclusions that are not based on the use of an item do not result in an exclusion from being an in-house research expense under this clause.

(I) For example:

(-a-) An item for which a taxable entity claimed the manufacturing exemption under Tax Code, §151.318 (Property Used in Manufacturing) or the sale for resale exemption under Tax Code, §151.302 (Sales for Resale) is excluded from being an in-house research expense under this clause.

(-b-) Water, sulphur, and items for which a taxable entity paid sales or use tax to another state are not subject to sales or use tax under Tax Code, §151.315 (Water), Tax Code, §151.3171 (Sulphur), and Tax Code, §151.303 (Previously Taxed Items: Use Tax Exemption or Credit), but are not excluded from being an in-house research expense under this clause.

(II) If an item is excluded from being an in-house research expense under this clause, and the taxable entity used that item in qualified research activities rather than the use for which the sales or use tax exemption was granted, the taxable entity may pay any sales or use tax, and any applicable penalty or interest, related to the purchase or use of the item. Once the applicable sales or use tax, penalty, and interest is paid, the taxable entity may include the cost of that item as an in-house research expense.

(iv) The term wages has the meaning given such term by IRC, §3401(a) (Wages). In the case of an employee within the meaning of IRC, §401(c)(1) (Self-employed individual treated as employee) the term wages includes the earned income as defined in IRC, §401(c)(2) (Earned income) of such employee. The term wages does not include any amount taken into account in determining the work opportunity credit under IRC, §51(a) (Determination of amount).

(v) If an employee performed both qualified services and nonqualified services, only wages for qualified services constitute an in-house research expense. Unless the taxable entity can demonstrate another method is more appropriate, the amount of wages that are in-house research expenses shall be determined by multiplying the total amount of wages paid to or incurred for the employee during the report year by the ratio of the total time actually spent by the employee in the performance of qualified services for the taxable entity to the total time spent by the employee in the performance of all services for the taxable entity during the report year.

(vi) Notwithstanding clause (v) of this subparagraph, if the ratio of the total time actually spent by an employee in the performance of qualified services for the taxable entity to the total time spent by the employee in the performance of all services for the taxable entity during the report year is greater than 80%, all services performed by that employee are considered qualified services.

(B) Contract research expenses are 65% of any amount paid or incurred by the taxable entity to any person, other than an employee of the taxable entity, for qualified research. If a taxable entity satisfies the requirements of IRC, §41(b)(3)(C) (Amounts paid to certain research consortia) or IRC, §41(b)(3)(D) (Amounts paid to eligible small businesses, universities, and Federal laboratories) the percentage of allowable contract research expenses is increased as provided by those subparagraphs.

(i) An expense is paid or incurred for qualified research only to the extent that it is paid or incurred pursuant to an agreement that:

(I) is entered into prior to the performance of the qualified research;

(II) provides that research be performed on behalf of the taxable entity; and

(III) requires the taxable entity to bear the expense even if the research is not successful.

(ii) If an expense is paid or incurred by the taxable entity pursuant to an agreement under which payment is contingent on the success of the research, then the expense is not a contract research expense because the expense is considered paid for the product or result of the research rather than the performance of the research. This clause only applies to that portion of a payment that is contingent on the success of the research.

(iii) Qualified research is performed on behalf of the taxable entity if the taxable entity has a right to the research results, even if that right is not exclusive.

(iv) If any contract research expenses are paid or incurred during one report year for qualified research that is conducted in a subsequent report year, the expenses shall be treated as paid or incurred during the report year in which the qualified research is conducted.

(v) See IRC, §41(b) for special circumstances that change the percentage that applies to contract research expenses.

(9) Registration Number--The Texas Qualified Research Registration Number issued by the comptroller to a person who submits the Texas Registration for Qualified Research and Development Sales Tax Exemption form.

(10) Research and development activities credit (credit)--A credit against franchise tax for qualified research expenses that is allowed under Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

(11) Tax period--The period on which a franchise tax report is based as provided by §3.584(c) of this title (relating to Margin: Reports and Payments).

(c) Application of the Four-Part Test. Research activities must satisfy each part of the Four-Part Test, as described in paragraph (1) of this subsection, to be qualified research.

(1) Four-Part Test.

(A) Section 174 Test. Expenditures related to the research must be eligible to be treated as expenses under IRC, §174 (Research and experimental expenditures).

(i) Expenditures are eligible to be treated as expenses under IRC, §174, if the expenditures are incurred in connection with the taxable entity's trade or business and represent a research and development cost in the experimental or laboratory sense. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxable entity does not establish the capability or method for developing or improving the product or the appropriate design of the product.

(ii) For the purposes of this test, the term "product" includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxable entity in its trade or business as well as products to be held for sale, lease, or license.

(iii) Expenditures for the following are not eligible to be treated as expenses under IRC, §174:

(I) land;

(II) depreciable property;

(III) the ordinary testing or inspection of materials or products for quality control;

(IV) efficiency surveys;

(V) management studies;

(VI) consumer surveys;

(VII) advertising or promotions;

(VIII) the acquisition of another's patent, model, production, or process; or

(IX) research in connection with literary, historical, or similar projects.

(B) Discovering Technological Information Test. The research must be undertaken for the purpose of discovering information that is technological in nature.

(i) Research is undertaken for the purpose of discovering technological information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxable entity does

not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) In order to satisfy the requirement that the research is technological in nature, the process of experimentation used to discover information must fundamentally rely on principles of the physical or biological sciences, engineering, or computer science. A taxable entity may employ existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(iii) A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxable entity:

(I) seek to obtain information that exceeds, expands, or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxable entity is performing the research; or

(II) succeed in developing a new or improved business component.

(C) Business Component Test. The application of the technological information for which the research is undertaken must be intended to be useful in the development of a new or improved business component of the taxable entity, which may include any product, process, computer software, technique, formula, or invention that is to be held for sale, lease, or license, or used by the taxable entity in a trade or business of the taxable entity.

(i) If a taxable entity provides a service to a customer, the service provided to that customer is not a business component because a service is not a product, process, computer software, technique, formula, or invention. However, a product, process, computer software, technique, formula, or invention used by a taxable entity to provide services to its customers may be a business component.

(ii) A design is not a business component because a design is not a product, process, computer software, technique, formula, or invention. While uncertainty as to the appropriate design of a business component is a qualifying uncertainty for the Section 174 Test and the Discovering Technological information test, the design itself is not a business component. For example, the design of a structure is not a business component, although the structure itself may be a business component. Similarly, a blueprint or other plan used to construct a structure that embodies a design is not a business component.

(D) Process of Experimentation Test. Substantially all of the research activities must constitute elements of a process of experimentation for a qualified purpose. A process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability, or quality of a business component. Any research relating to style, taste, cosmetic, or seasonal design factors does not satisfy the Process of Experimentation Test.

(i) A process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxable entity's research activities.

(ii) A process of experimentation must:

(I) be an evaluative process and generally should be capable of evaluating more than one alternative; and

(II) fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involve:

(-a-) the identification of uncertainty concerning the development or improvement of a business component;

(-b-) the identification of one or more alternatives intended to eliminate that uncertainty; and

(-c-) the identification and the conduct of a process of evaluating the alternatives through, for example, modeling, simulation, or a systematic trial and error methodology.

(iii) A taxable entity may undertake a process of experimentation if there is no uncertainty concerning the taxable entity's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxable entity's research activities. Uncertainty concerning the development or improvement of the business component (e.g., its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

(iv) The substantially all requirement of this subparagraph is satisfied only if 80% or more of a taxable entity's research activities, measured on a cost or other consistently applied reasonable basis constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality. The substantially all requirement is satisfied even if the remainder of a taxable entity's research activities with respect to the business component do not constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality.

(v) Non-experimental methods, such as simple trial and error, brainstorming, or reverse engineering, are not considered a process of experimentation.

(vi) The following are factors that may be considered in determining whether a trial and error methodology is experimental systematic trial and error or non-experimental simple trial and error. Evidence provided to determine the type of trial and error is not limited to these factors, nor is evidence of each factor required. These factors only apply to determining whether a process of experimentation is systematic trial and error. Systematic trial and error is not the only qualifying process of experimentation. These factors are:

(I) whether the person conducting the trial and error methodology stops testing alternatives once a single acceptable result is found or continues to find multiple acceptable results for comparison;

(II) whether all the results of the trial and error methodology are recorded for evaluation;

(III) whether there is a written procedure for conducting the trial and error methodology; and

(IV) whether there is a written procedure for evaluating the results of the trial and error methodology.

(vii) Examples.

(I) Example 1. A taxable entity is engaged in the business of developing and manufacturing widgets. The taxable entity wants to change the color of its blue widget to green. The taxable entity obtains several different shades of green paint from various suppliers. The taxable entity paints several sample widgets, and surveys its customers to determine which shade of green its customers prefer. The taxable entity's activities to change the color of its blue widget to green do not satisfy the Process of Experimentation Test because its activities

are not undertaken for a qualified purpose. All of the taxable entity's research activities are related to style, taste, cosmetic, or seasonal design factors.

(II) Example 2. The taxable entity in Example 1 chooses one of the green paints. The taxable entity obtains samples of the green paint from a supplier and determines that it must modify its painting process to accommodate the green paint because the green paint has different characteristics from other paints it has used. The taxable entity obtains detailed data on the green paint from its paint supplier. The taxable entity also consults with the manufacturer of its paint spraying machines. The manufacturer informs the taxable entity that it must acquire new nozzles that operate with the green paint it wants to use because the current nozzles do not work with the green paint. The taxable entity tests the new nozzles, using the green paint, to ensure that they work as specified by the manufacturer of the paint spraying machines. The taxable entity's activities to modify its painting process are not qualified research. The taxable entity did not conduct a process of evaluating alternatives in order to eliminate uncertainty regarding the modification of its painting process. Rather, the manufacturer of the paint machines eliminated the taxable entity's uncertainty regarding the modification of its painting process. The taxable entity's activities to test the nozzles to determine if the nozzles work as specified by the manufacturer of the paint spraying machines are in the nature of routine or ordinary testing or inspection for quality control.

(III) Example 3. A taxable entity is engaged in the business of manufacturing food products and currently manufactures a large-shred version of a product. The taxable entity seeks to modify its current production line to permit it to manufacture both a large-shred version and a fine-shred version of one of its food products. A smaller, thinner shredding blade capable of producing a fine-shred version of the food product is not commercially available. Thus, the taxable entity must develop a new shredding blade that can be fitted onto its current production line. The taxable entity is uncertain concerning the design of the new shredding blade because the material used in its existing blade breaks when machined into smaller, thinner blades. The taxable entity engages in a systematic trial and error process of analyzing various blade designs and materials to determine whether the new shredding blade must be constructed of a different material from that of its existing shredding blade and, if so, what material will best meet its functional requirements. The taxable entity's activities to modify its current production line by developing the new shredding blade satisfy the Process of Experimentation Test. Substantially all of the taxable entity's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of the taxable entity's research activities. The taxable entity identified uncertainties related to the development of a business component, and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxable entity's process of evaluating identified alternatives was technological in nature and was undertaken to eliminate the uncertainties.

(IV) Example 4. A taxable entity is in the business of designing, developing and manufacturing automobiles. In response to government-mandated fuel economy requirements, the taxable entity seeks to update its current model vehicle and undertakes to improve aerodynamics by lowering the hood of its current model vehicle. The taxable entity determines, however, that lowering the hood changes the air flow under the hood, which changes the rate at which air enters the engine through the air intake system, which reduces the functionality of the cooling system. The taxable entity's engineers are uncertain how to design a lower hood to obtain the increased fuel economy, while maintaining the necessary air flow under the hood. The taxable entity designs, models, simulates, tests, refines, and re-tests several alternative designs for the hood and associated proposed modifications to both the air intake system and cooling system. This process enables the taxable entity to eliminate the uncertainties related to the integrated design of the hood, air intake system, and cooling system. Such activities constitute 85% of its total activities to update its current model vehicle. The taxable entity then engages in additional activities that do not involve a process of evaluating alternatives in order to eliminate uncertainties. The additional activities constitute only 15% of the taxable entity's total activities to update its current model vehicle. In this case substantially all of the taxable entity's activities constitute elements of a process of experimentation because it evaluated alternatives to achieve a result where the method of achieving that result, and the appropriate design of that result, were uncertain as of the beginning of its research activities. The taxable entity identified uncertainties related to the improvement of a business component and identified alternatives intended to eliminate these uncertainties. Furthermore, the taxable entity's process of evaluating the identified alternatives was technological in nature and was undertaken to eliminate the uncertainties. Because 85% of the taxable entity's activities to update its current model vehicle constitute elements of a process of experimentation that relates to a new or improved function, performance, reliability, or quality, all of its activities satisfy the Process of Experimentation Test.

(V) Example 5. A taxable entity is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. The taxable entity is engaged to construct a structure in a part of Texas where foundation problems are common. The taxable entity's engineers were uncertain how to design the structure to ensure stability of the structure's foundation because the taxable entity had never designed a structure in a similar location. The taxable entity's engineers used their professional experience and various building codes to determine how to design the foundation based on the conditions at the construction site. The engineers chose to use piles in the foundation. The taxable entity constructed a test pile on site to confirm whether this would work in the conditions present on the construction site. This test pile would become part of the foundation of the structure regardless of whether the engineers had to redesign the additional piles required for the foundation. The taxable entity's activities in using professional experience and business codes to design the foundation did not meet the Process of Experimentation Test because the activities did not resolve technological uncertainties through an experimental process. Constructing the test pile also did not meet the Process of Experimentation Test because it was not an evaluative process.

(VI) Example 6. A taxable entity is in the business of providing building and construction services, including the construction of warehouses, strip malls, office buildings, and other commercial structures. For one of its projects to construct an office building, the taxable entity was uncertain how to design the layout of the electrical systems. The taxable entity's employees held on-site meetings to discuss different options, such as running the wire under the floor or through the ceiling, but did not actually experiment by installing wire in different locations. The taxable entity used computer-aided simulation and modeling to produce the final electrical system layout. While in some cases computer-aided simulation and modeling may be an experimental process, in this case, it was not an experimental process because the taxable entity did not use the computer-aided simulation and modeling to evaluate different alternatives in a scientific manner. The taxable entity's activities did not satisfy the Process of Experimentation Test because it did not conduct an experimental process of evaluating alternatives to eliminate a technological uncertainty.

(VII) Example 7. A taxable entity is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxable entity decided to use hori-

zontal drilling in this area, but it had never drilled a horizontal well and was uncertain how to successfully execute the horizontal drilling. At the time the taxable entity began horizontal drilling, the technology to drill horizontal wells was established. The taxable entity selected technology from existing commercially available options to use in its horizontal drilling program. The taxable entity's activities did not satisfy the Process of Experimentation Test because evaluating commercially available options does not constitute a process of experimentation.

(VIII) Example 8. A taxable entity is an oil and gas operator that recently acquired rights to drill in an area in which it had not previously operated. The taxable entity decided to use horizontal drilling in this area. The taxable entity had drilled a horizontal well before in a different formation and at different depths. However, it had never drilled a horizontal well in this formation or at the required depths and was uncertain how to successfully execute the horizontal drilling. The taxable entity utilized its existing technology to perform its horizontal drilling operations in this area and the existing technology was successful. The taxable entity's activities did not satisfy the Process of Experimentation Test because the taxable entity merely used its existing technology and did not perform any experimentation to evaluate any alternative drilling methods.

(IX) Example 9. A taxable entity sought to discover cancer immunotherapies. The taxable entity was uncertain as to the appropriate design of the proteins to be used as a drug candidate. The taxable entity identified several alternative protein constructs and used a process to test them. The taxable entity's process involved testing the constructs using in vitro functional assays and binding assays, and either modifying the designs or discarding them and repeating the previous steps. The taxable entity took the resulting products from the in vitro testing and tested the drug candidate in living organisms. This process evaluated the various alternatives identified by the taxable entity. The taxable entity's activities satisfied the Process of Experimentation Test.

(2) Application of the Four-Part Test to business components. The Four-Part Test is applied separately to each business component of the taxable entity. Any plant process, machinery, or technique for commercial production of a business component is treated as a separate business component from the business component being produced.

(3) Shrink-back rule. The Four-Part Test is first applied at the level of the discrete business component used by the taxable entity in a trade or business of the taxable entity. If the requirements of the Four-Part Test are not met at that level, then they are applied at the next most significant subset of elements of the business component. This shrinking back of the product continues until either a subset of elements of the product that satisfies the requirements of the Four-Part Test is reached, or the most basic element of the product is reached, and such element fails to satisfy any part of the Four-Part Test.

(4) Software development as qualified research. In determining if software development activities constitute qualified research, the comptroller will consider the facts and circumstances of each activity.

(A) Application of Four-Part Test to software development activities.

(i) A taxable entity must prove that a software development activity is qualified research and meets all the requirements of the Four-Part Test under paragraph (1) of this subsection, even if the activity is likely to qualify as described in subparagraph (B) of this paragraph.

(ii) A taxable entity may prove that a software development activity described as unlikely to qualify in subparagraph (C) of this paragraph, is qualified research by providing evidence that the activity meets all the requirements of the Four-Part Test under paragraph (1) of this subsection.

(B) Software development activities likely to qualify. Types of activities likely to qualify include, but are not limited to:

(i) developing the initial release of an application software product that includes new constructs, such as new architectures, new algorithms, or new database management techniques;

(ii) developing system software, such as operating systems and compilers;

(iii) developing specialized technologies, such as image processing, artificial intelligence, or speech recognition; and

(iv) developing software as part of a hardware product where the software interacts directly with that hardware in order to make the hardware/software package function as a unit.

(C) Software development activities unlikely to qualify. Types of activities unlikely to qualify include, but are not limited to:

(i) maintaining existing software applications or products;

(ii) configuring purchased software applications;

(iii) reverse engineering of existing applications;

(iv) performing studies, or similar activities, to select vendor products;

(v) detecting flaws and bugs directed toward the verification and validation that the software was programmed as intended and works correctly;

(vi) modifying an existing software business component to make use of new or existing standards or devices, or to be compliant with another vendor's product or platform;

(vii) developing a business component that is substantially similar in technology, functionality, and features to the capabilities already in existence at other companies;

(viii) upgrading to newer versions of hardware or software or installing vendor-fix releases;

(ix) re-hosting or porting an application to a new hardware such as from mainframe to PC, or software platform, such as Windows to UNIX, or rewriting an existing application in a new language, such as rewriting a COBOL mainframe application in C++;

(x) writing hardware device drivers to support new hardware, such as disks, scanners, printers, or modems;

(xi) performing data quality, data cleansing, and data consistency activities, such as designing and implementing software to validate data fields, clean data fields, or make the data fields consistent across databases and applications;

(xii) bundling existing individual software products into product suites, such as combining existing word processor, spreadsheet, and slide presentation software applications into a single suite;

(xiii) expanding product lines by purchasing other products;

(xiv) developing interfaces between different software applications;

(xv) developing vendor product extensions;

(xvi) designing graphic user interfaces;

(xvii) developing functional enhancements to existing software applications/products;

(xviii) developing software as an embedded application, such as in cell phones, automobiles, and airplanes;

(xix) developing software utility programs, such as debuggers, backup systems, performance analyzers, and data recovery;

(xx) changing from a product based on one technology to a product based on a different or newer technology; and

(xxi) adapting and commercializing technology developed by a consortium or open software group.

(d) Excluded research activities. Qualified research does not include the activities described in this subsection.

(1) Research after commercial production. Any research conducted after the beginning of commercial production of the business component.

(A) Activities are conducted after the beginning of commercial production of a business component if such activities are conducted after the component is developed to the point where it is ready for commercial sale or use or meets the basic functional and economic requirements of the taxable entity for the component's sale or use.

(B) The following activities are deemed to occur after the beginning of commercial production of a business component:

(i) preproduction planning for a finished business component;

(ii) tooling-up for production;

(iii) trial production runs;

(iv) troubleshooting involving detecting faults in production equipment or processes;

(v) accumulating data relating to production processes;

(vi) debugging flaws in a business component; and

(vii) any activities that involve the use of an item for which the taxable entity claimed the manufacturing exemption under Tax Code, §151.318.

(C) In cases involving development of both a product and a manufacturing or other commercial production process for the product, the research after commercial production exclusion applies separately for the activities relating to the development of the product and the activities relating to the development of the process. For example, even after a product meets the taxable entity's basic functional and economic requirements, activities relating to the development of the manufacturing process may still constitute qualified research, provided that the development of the process itself separately satisfies the requirements of this section, and the activities are conducted before the process meets the taxable entity's basic functional and economic requirements or is ready for commercial use.

(D) Clinical testing of a pharmaceutical product prior to its commercial production in the United States is not treated as occurring after the beginning of commercial production even if the product is commercially available in other countries. Additional clinical testing of a pharmaceutical product after a product has been approved for a specific therapeutic use by the Food and Drug Administration and is ready for commercial production and sale is not treated as occurring after the beginning of commercial production if such clinical testing is undertaken to establish new functional uses, characteristics, indications, combinations, dosages, or delivery forms for the product. A functional use, characteristic, indication, combination, dosage, or delivery form shall be considered new only if such functional use, characteristic, indication, combination, dosage, or delivery form must be approved by the Food and Drug Administration.

(E) Examples.

(i) Example 1. A taxable entity is a tire manufacturer and develops a new material to use in its tires. The taxable entity conducts research to determine the changes that will be necessary for it to modify its existing manufacturing processes to manufacture the new tire. The taxable entity determines that the new tire material retains heat for a longer period of time than the materials it currently uses for tires, and, as a result, the new tire material adheres to the manufacturing equipment during tread cooling. The taxable entity evaluates several alternatives for processing the treads at cooler temperatures to address this problem, including a new type of belt for its manufacturing equipment to be used in tread cooling. Such a belt is not commercially available. Because the taxable entity is uncertain of the belt design, it develops and conducts sophisticated engineering tests on several alternative designs for a new type of belt to be used in tread cooling until it successfully achieves a design that meets its requirements. The taxable entity then manufactures a set of belts for its production equipment, installs the belts, and tests the belts to make sure they were manufactured correctly. The taxable entity's research with respect to the design of the new belts to be used in its manufacturing of the new tire may be qualified research under the Four-Part Test. However, the taxable entity's expenses to implement the new belts, including the costs to manufacture, install, and test the belts were incurred after the belts met the taxable entity's functional and economic requirements and are excluded as research after commercial production.

(ii) Example 2. For several years, a taxable entity has manufactured and sold a particular kind of widget. The taxable entity initiates a new research project to develop a new or improved widget. The taxable entity's activities to develop a new or improved widget are not excluded from the definition of qualified research under this paragraph. The taxable entity's activities relating to the development of a new or improved widget constitute a new research project to develop a new business component and are not considered activities conducted after the beginning of commercial production.

(iii) Example 3. For the purposes of this example, assume that the taxable entity's development of its products and manufacturing processes satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxable entity is a manufacturer of integrated circuits for use in specific applications. The taxable entity develops various integrated circuit devices and associated manufacturing processes. The taxable entity assembles various product configurations for testing. After an internal process of testing, the taxable entity delivers a sample quantity of the integrated circuit to a potential customer for further testing. At the time when the samples are delivered to the taxable entity's potential customer, the potential customer has not agreed to purchase any integrated circuits from the taxable entity. This process of testing by both the taxable entity and its potential customer continues until an acceptable product and manufacturing process to produce the product is achieved. At that point, the taxable entity and the potential customer enter into an agreement for the delivery of an order of the integrated circuits. In some cases, no acceptable product or manufacturing process is achieved, and no agreement is reached with the potential customer. Research activities occurring prior to an agreement are not considered activities conducted after the beginning of commercial production be-

cause the integrated circuits were not yet ready for commercial use. Any research that occurs after an agreement is reached are excluded as activities conducted after the beginning of commercial production because the integrated circuits were ready for commercial use once the product and associated manufacturing process was accepted by the potential customer.

(2) Adaptation of existing business components. Activities relating to adapting an existing business component to a particular customer's requirement or need. This exclusion does not apply merely because a business component is intended for a specific customer. For example:

(A) Example 1. A taxable entity is a computer software development firm and owns a general ledger accounting software core program that it markets and licenses to customers. The taxable entity incurs expenditures in adapting the core software program to the requirements of one of its customers. Because the taxable entity's activities represent activities to adapt an existing software program to a particular customer's requirement or need, its activities are excluded from the definition of qualified research under this paragraph.

(B) Example 2. Assume that the customer from Example 1 pays the taxable entity to adapt the core software program to the customer's requirements. Because the taxable entity's activities are excluded from the definition of qualified research, the customer's payments to the taxable entity are not for qualified research and are not considered to be contract research expenses.

(C) Example 3. Assume that the customer from Example 1 uses its own employees to adapt the core software program to its requirements. Because the customer's employees' activities to adapt the core software program to its requirements are excluded from the definition of qualified research, the wages the customer paid to its employees do not constitute in-house research expenses.

(D) Example 4. A taxable entity manufactures and sells rail cars. Because rail cars have numerous specifications related to performance, reliability and quality, rail car designs are subject to extensive, complex testing in the scientific or laboratory sense. A customer orders passenger rail cars from the taxable entity. The customer's rail car requirements differ from those of the taxable entity's other existing customers only in that the customer wants fewer seats in its passenger cars and a higher quality seating material and carpet that are commercially available. The taxable entity manufactures rail cars meeting the customer's requirements. The rail car sold to the customer was not a new business component, but merely an adaptation of an existing business component that did not require a process of experimentation. Thus, the taxable entity's activities to manufacture rail cars for the customer are excluded from the definition of qualified research because the taxable entity's activities represent activities to adapt an existing business component to a particular customer's requirement or need.

(E) Example 5. A taxable entity is a manufacturer and undertakes to create a manufacturing process for a new valve design. The taxable entity determines that it requires a specialized type of robotic equipment to use in the manufacturing process for its new valves. Such robotic equipment is not commercially available. Therefore, the taxable entity purchases existing robotic equipment for the purpose of modifying it to meet its needs. The taxable entity's engineers identify uncertainty that is technological in nature concerning how to modify the existing robotic equipment to meet its needs. The taxable entity's engineers develop several alternative designs, conduct experiments using modeling and simulation in modifying the robotic equipment, and conduct extensive scientific and laboratory testing of design alternatives. As a result of this process, the taxable entity's engineers develop a design for the robotic equipment that meets its needs. The taxable entity constructs and installs the modified robotic equipment on its manufacturing process. The taxable entity's research activities to determine how to modify the robotic equipment it purchased for its manufacturing process are not considered an adaptation of an existing business component.

(F) Example 6. A taxable entity is an oil and gas operator and has been engaged in horizontal drilling for the past ten years. Recently, the taxable entity was hired by a customer to drill in a formation. The drilling objectives included targeting an interval within that formation for horizontal drilling. The taxable entity was uncertain about the successful execution of the horizontal drilling because it had not previously drilled a horizontal well in that formation. The taxable entity was also uncertain about the economic results from the targeted interval. The taxable entity drilled several horizontal wells before its customer was satisfied with the economic results. The taxable entity modified its existing horizontal drilling program based on these results. The taxable entity's activities to identify a horizontal drilling process are excluded from the definition of qualified research because the activities consisted of adapting an existing business component, its existing horizontal drilling process, and did not involve creating a new or improved business component.

(G) Example 7. For the purposes of this example, assume that the taxable entity's development of its products satisfies the Four-Part Test described by subsection (c) of this section and is not otherwise excluded under this subsection. A taxable entity is a manufacturer of rigid plastic containers. The taxable entity contracts with major food and beverage manufacturers to provide suitable bottle and packaging designs. The products designed by the taxable entity may be for repeat customers and the sizes and types of bottle may be similar to previous products. The development of each new product, and the production process necessary to produce the products at sufficient production volume, starts from new concept drawings developed by engineers. The taxable entity uses a qualifying process of experimentation to evaluate alternative concepts for the product and production processes. The taxable entity's activities related to both the product and the production process are not excluded from the definition of qualified research as an adaptation of an existing business component.

(3) Duplication of existing business component. Any research related to the reproduction of an existing business component, in whole or in part, from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component. This exclusion does not apply merely because the taxable entity examines an existing business component in the course of developing its own business component.

(4) Surveys, studies, etc. Any efficiency survey; activity relating to management function or technique; market research, testing or development (including advertising or promotions); routine data collection; or routine or ordinary testing or inspection for quality control.

(5) Computer software. Any research activities with respect to internal use software.

(A) For the purposes of this paragraph, internal use software is computer software developed by, or for the benefit of, the taxable entity primarily for internal use by the taxable entity. [~~A taxable entity uses software internally if the software was developed for use in the operation of the business. Computer software that is developed to be commercially sold, leased, licensed, or otherwise marketed for separately stated consideration to unrelated third parties is not internal use software.~~]

[~~(B) Software developed by a taxable entity primarily for internal use by an entity that is part of an affiliated group to which the taxable entity also belongs shall be considered internal use software for purposes of this paragraph.~~]

(B) [~~(C)~~] This exclusion does not apply to software used in:

(i) an activity that constitutes qualified research, or

(ii) a production process that meets the requirements of the Four-Part Test.

[~~(D) The determination as to whether software is internal use software depends on the facts and circumstances existing at the beginning of the development of the software.~~]

(6) Social sciences, etc. Any research in the social sciences, arts, or humanities.

(7) Funded research. Any research funded by any grant, contract, or otherwise by another person or governmental entity.

(A) Research is considered funded if:

(i) the taxable entity performing the research for another person retains no substantial rights to the results of the research; or

(ii) the payments to the researcher are not contingent upon the success of the research.

(B) For the purposes of determining whether a taxable entity retains substantial rights to the results of the research:

(i) Incidental benefits to the researcher from the performance of the research do not constitute substantial rights. For example, increased experience in a field of research is not considered substantial rights.

(ii) A taxable entity does not retain substantial rights in the research it performs if the taxable entity must pay for the right to use the results of the research.

(C) If a taxable entity performing research does not retain substantial rights to the results of the research, the research is considered funded regardless of whether the payments to the researcher are contingent upon the success of the research. In this case, all research activities are considered funded even if the researcher has expenses that exceed the amount received by the researcher for the research.

(D) If a taxable entity performing research does retain substantial rights to the results of the research and the research is considered funded under subparagraph (A)(ii) of this paragraph, the research is only funded to the extent of the payments and fair market value of any property that the taxable entity becomes entitled to by performing the research. If the expenses related to the research exceed the amount the researcher is entitled to receive, the research is not considered funded with respect to the excess expenses. For example, a taxable entity performs research for another person. Based on the contract, the research activities are considered funded under subparagraph (A)(ii) of this paragraph because payments to the researcher are not contingent on the success of the research. The taxable entity retains substantial rights to the results of the research. The taxable entity is entitled to $100,000 under the contract but spent $120,000 on the research activities. In this case, the research is considered funded with respect to $100,000 and is not considered funded with respect to $20,000.

(E) A taxable entity performing research for another person must identify any other person paying for the research activities and any person with substantial rights to the results of the research.

(F) All agreements, not only research contracts, entered into between the taxable entity performing the research and the party funding the research shall be considered in determining the extent to which the research is funded.

(G) The provisions of this paragraph shall be applied separately to each research project undertaken by the taxable entity.

(e) Eligibility for credit.

(1) A taxable entity is eligible to claim a credit for the periods in which the taxable entity is engaged in qualified research and incurs qualified research expenses. The credit may be claimed on a franchise tax report for qualified research expenses incurred during the period on which the report is based.

(2) A taxable entity has the burden of establishing its entitlement to, and the value of, the credit by clear and convincing evidence, including proof that the research activities meet the definition of qualified research, the amount of any qualified research expenses, and applying the shrink-back rule described in subsection (c)(3) of this section.

(A) All qualified research expenses must be paid or incurred in connection with research activities that are qualified research.

(B) All qualified research expenses must be supported by contemporaneous business records.

(i) Contemporaneous business records for wages are records that were created and maintained during the period in which the taxable entity paid the employee to engage in qualified services. This includes, but is not limited to, payroll records, employee job descriptions, performance evaluations, calendars, and appointment books.

(ii) Contemporaneous business records for supplies are records that were created and maintained during the period in which the supplies were purchased. This includes, but is not limited to, inventory records, invoices, purchase orders, and contracts.

(iii) Contemporaneous business records for contract research expenses are records that were created and maintained during the period in which the contract research expenses were paid or incurred. This includes, but is not limited to, contracts and invoices.

(3) An Internal Revenue Service audit determination of eligibility for the federal research and development credit under IRC, §41 (Credit for increasing research activities), whether that determination is that the taxable entity qualifies or does not qualify for the federal research and development credit, is not binding on the comptroller's determination of eligibility for the credit.

(f) Ineligibility for credit.

(1) A taxable entity is not eligible to claim a credit on a franchise tax report for qualified research expenses incurred during the period on which the report is based if the taxable entity, or a member of the combined group, if the taxable entity is a combined group, received an exemption from sales and use tax under Tax Code, §151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation) during that period.

(2) A taxable entity that is not eligible to claim a credit under this subsection may carry forward an unused credit under subsection (l) of this section.

(g) Amount of credit.

(1) Qualified research expenses in Texas. Subject to subsection (h) of this section, and except as provided by paragraphs (2), (3), and (4) of this subsection, the credit allowed for any report equals 5.0% of the difference between:

(A) all qualified research expenses incurred during the period on which the report is based; and

(B) 50% of the average amount of all qualified research expenses incurred during the three tax periods preceding the period on which the report is based.

(2) Entities without qualified research expenses in each of the three preceding tax periods. Except as provided by paragraph (4) of this subsection, if the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the credit for the period on which the report is based equals 2.5% of the qualified research expenses incurred during that period.

(3) Qualified research expenses under a higher education contract. Subject to subsection (h) of this section, and except as provided by paragraph (4) of this subsection, if the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity incurs qualified research expenses in Texas under the contract during the period on which the report is based, then the credit for the report equals 6.25% of the difference between:

(A) all qualified research expenses incurred during the period on which the report is based; and

(B) 50% of the average amount of all qualified research expenses incurred during the three tax periods preceding the period on which the report is based.

(4) Entities with qualified research expenses under higher education contracts but without qualified research expenses in each of the three preceding tax periods. If the taxable entity incurs qualified research expenses in Texas under a contract with one or more public or private institutions of higher education for the performance of qualified research during the period on which the report is based, but the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, then the credit for the period on which the report is based equals 3.125% of all qualified research expenses incurred during that period.

(5) Same method of computing qualified research expenses required. Notwithstanding whether the statute of limitations for claiming a credit under this section has expired for any tax period used in determining the average amount of qualified research expenses under paragraph (1)(B) or (3)(B) of this subsection, the determination of which research expenses are qualified research expenses for purposes of computing that average must be made in the same manner as that determination is made for purposes of paragraph (1)(A) or (3)(A) of this subsection. The comptroller may verify the qualified research expenses used to compute the prior year average, even if the statute of limitations for the prior year has expired. This verification will not result in an adjustment to tax, penalty, or interest for any report year for which the statute of limitations is closed.

(6) A taxable entity with any qualified research expenses under higher education contracts in a tax period may include all of its qualified research expenses in the calculations under paragraphs (3) and (4) of this subsection, even if not all of the qualified research expenses are related to higher education contracts. For taxable entities in a combined group, see subsection (i) of this section.

(h) Attribution of expenses following transfer of controlling interest.

(1) If a taxable entity acquires a controlling interest in another taxable entity, or in a separate unit of another taxable entity, during a tax period with respect to which the acquiring taxable entity claims a credit under this section, then the amount of the acquiring taxable entity's qualified research expenses equals the sum of:

(A) the amount of qualified research expenses incurred by the acquiring taxable entity during the period on which the report is based; and

(B) subject to paragraph (4) of this subsection, the amount of qualified research expenses incurred by the acquired taxable entity or unit during the portion of the period on which the report is based that precedes the date of the acquisition.

(2) A taxable entity that sells or otherwise transfers to another taxable entity a controlling interest in another taxable entity, or in a separate unit of a taxable entity, during a period on which a report is based may not claim a credit under this section for qualified research expenses incurred by the transferred taxable entity or unit during the period if:

(A) the taxable entity that makes the sale or transfer is ineligible for the credit under subsection (f) of this section; or

(B) the acquiring taxable entity claims a credit under this section for the corresponding period.

(3) If during any of the three tax periods following the period in which a sale or other transfer described by paragraph (2) of this subsection occurs, the taxable entity that sold or otherwise transferred the controlling interest reimburses the acquiring taxable entity for research activities conducted on behalf of the taxable entity that made the sale or other transfer, the amount of the reimbursement is:

(A) included as qualified research expenses incurred by the taxable entity that made the sale or other transfer for the tax period during which the reimbursement was paid, subject to paragraph (5) of this subsection; and

(B) excluded from the qualified research expenses incurred by the acquiring taxable entity for the tax period during which the reimbursement was paid.

(4) An acquiring taxable entity may not include on a report the amount of qualified research expenses otherwise authorized by paragraph (1)(B) of this subsection if the taxable entity that made the sale or other transfer described by paragraph (2) of this subsection received an exemption under Tax Code, §151.3182 during the portion of the period on which the acquiring taxable entity's report is based that precedes the date of the acquisition.

(5) A taxable entity that makes a sale or other transfer described by paragraph (2) of this subsection may not include on a report the amount of reimbursement otherwise authorized by paragraph (3)(A) of this subsection if the reimbursement is for research activities that occurred during a tax period in which the entity that makes a sale or other transfer received an exemption under Tax Code, §151.3182.

(i) Combined reporting.

(1) The combined group is the taxable entity for purposes of calculating and reporting this credit. [~~A credit under this section for qualified research expenses incurred by a member of a combined group must be claimed on the combined report for the group required by Tax Code, §171.1014.~~]

(2) A credit under this section for qualified research expenses incurred by a member of a combined group must be claimed on the combined report for the group required by Tax Code, §171.1014. [~~The combined group is the taxable entity for purposes of this section.~~] The total qualified research expenses of each member of the combined group shall be added together to determine the total credit claimed on the combined report.

(3) When the membership of a combined group changes, the credit carryforward under subsection (l) of this section will be determined as follows:

(A) For the purposes of this paragraph, the carryforward attributable to a member of a combined group for each prior report year is determined by multiplying the total credit carryforward available for that report year by a fraction, the numerator of which is the qualified research expenses paid or incurred by the member during that report year, and the denominator of which is the total qualified research expenses paid or incurred by the combined group during that report year.

(B) If a combined group loses a member, the credit carryforward will be attributed to each member of the combined group that was included on the report for the report year to which the carryforward relates. Each member of the combined group that has a carryforward attributed to it under this subparagraph, including the member that leaves the combined group, may continue to use that carryforward on its future franchise tax reports.

(C) If a taxable entity that was not part of a combined group when it created a credit carryforward later joins a combined group, any credit carryforward it had previously established may be claimed on the combined group's future franchise tax reports.

(D) If a taxable entity, including a member of a combined group, is a non-surviving entity in a merger transaction, any credit carryforward established by the non-surviving entity may be claimed on the surviving entity's future franchise tax reports.

(E) If a taxable entity, including a member of a combined group, is terminated, dissolved, or otherwise loses its status as a legal entity, the credit carryforward attributable to that taxable entity may not be claimed on any future franchise tax report. This subparagraph does not apply if subparagraph (D) of this paragraph or subsection (m) of this section applies.

(F) If all of the assets of a member of a combined group are conveyed, assigned or transferred in a manner that qualifies under subsection (m) of this section, the carryforward attributable to that member may be conveyed, assigned, or transferred as part of that transaction.

(G) A combined group may only use a credit carryforward attributable to a member under subparagraphs (B), (C), or (D) of this paragraph if that member is part of the combined group on the last day of the accounting period on which that report is based.

~~[(3) If there is a change in membership of the combined group, the resulting combined group is a new taxable entity and the resulting combined group is not entitled to the carryforward of the credit under subsection (l) of this section because it is no longer the same taxable entity as the taxable entity that established the credit carryforward. For the purposes of this section, there is no change in membership of the combined group if:~~

~~[(A) the common owner or owners of the members of the combined group changes without any change in the members of the combined group;~~

~~[(B) the common owner or owners change without any change in the members of the combined group other than the addition of a newly-formed entity that is the new common owner;]~~

~~[(C) the combined group undergoes a corporate reorganization that does not result in any member entities leaving the combined group;~~

~~[(D) two or more members of the combined group merge;]~~

~~[(E) one or more members of the combined group forms a new entity that is a member of the combined group; or]~~

~~[(F) one or more members of the combined group is terminated, dissolved, or otherwise loses its status as a legal entity.]~~

(4) A combined group with any qualified research expenses under higher education contracts in a tax period may include all of its qualified research expenses in the calculations under subsection (g)(3) and (4) of this section, even if not all of the members of the combined group have qualified research expenses that are related to higher education contracts.

(j) Tiered partnership reporting.

(1) An upper tier entity and a lower tier entity may claim a credit under this section for qualified research expenses; however, an upper tier entity and a lower tier entity cannot claim a credit under this section for the same qualified research expense.

(2) An upper tier entity that includes the total revenue of a lower tier entity for purposes of computing its taxable margin as authorized by Tax Code, §171.1015 (Reporting for Certain Partnerships in Tiered Partnership Arrangement) may claim the credit under this section for qualified research expenses incurred by the lower tier entity to the extent of the upper tier entity's ownership interest in the lower tier entity.

(k) Limitation. The total credit claimed under this section for a report, including the amount of any carryforward credit under subsection (l) of this section, may not exceed 50% of the amount of franchise tax due for the report before any other applicable tax credits.

(l) Carryforward.

(1) If a taxable entity is eligible for a credit that exceeds the limitation under subsection (k) of this section, the taxable entity may carry the unused credit forward for not more than 20 consecutive reports.

(2) Research and development credits, including credit carryforwards, are considered to be used in the following order:

(A) a credit carryforward of unused research and development credits accrued under Tax Code, Chapter 171, Subchapter O (Tax Credit for Certain Research and Development Activities), before its repeal on January 1, 2008, and claimed as authorized by §3.593 of this title (relating to Margin: Franchise Tax Credits);

(B) a credit carryforward under this section; and

(C) a current year credit.

(3) If a taxable entity claims a carryforward on a report within the statute of limitations, the comptroller may verify that the credit that established the carryforward was based on qualified research activities, even if the statute of limitations for the year in which the credit was created has expired. This verification will not result in an adjustment to tax, penalty, or interest for any report year for which the statute of limitations has expired. The verification may result in an adjustment to the carryforward for all periods within the unexpired statute of limitations and for all future periods in which the taxable entity may claim the carryforward.

(4) For application of the carryforward to combined groups, see subsection (i)(3) of this section.

(m) Assignment prohibited. A taxable entity may not convey, assign, or transfer the credit allowed under this section to another en-

tity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction. The conveyance, assignment, or transfer of an ownership interest in the taxable entity is not a conveyance, assignment, or transfer of the credit by the taxable entity.

(n) Application for credit.

(1) A taxable entity applies for the credit by claiming the credit on or with the franchise tax report for the period for which the credit is claimed. A taxable entity must also complete Form 05-178, Texas Franchise Tax Research and Development Activities Credits Schedule, its electronic equivalent, or any form promulgated by the comptroller that succeeds such form.

(2) The comptroller may require a taxable entity that claims a credit under this section to provide all data and information required for the comptroller to evaluate the credit and to comply with Tax Code, §151.3182(c).

(o) Amending reports.

(1) If a report was originally due and filed after the effective date of this section and a credit allowed under this section was not claimed, a taxable entity may file an amended report within the statute of limitation to claim a credit, if the taxable entity or a member of its combined group does not have an active Registration Number for that period. See §3.584 of this title for information about filing an amended report.

(2) If a taxable entity or member of the combined group has or had a Registration Number for a period for which it intends to claim a credit allowed under this section, the taxable entity or member of the combined group must submit a written request to cancel the registration before claiming a credit. The written request must contain the following information:

(A) the tax period(s) covered by the report for which it intends to claim a credit allowed under this section; and

(B) a statement whether any tax-exempt purchases were made. If tax-exempt purchases were made, include an original or amended sales and use tax report with tax due, penalty, and interest for the sales tax periods that cover the tax-exempt purchases.

(3) If a report was filed claiming a credit allowed under this section and the taxable entity later decides to claim a sales and use tax exemption under Tax Code, §151.3182, the taxable entity must:

(A) file an amended franchise tax report that does not claim the credit under this section and pay any tax, penalty, and interest due;

(B) apply for a Registration Number; and

(C) file a request for a sales and use tax refund for taxes paid on purchases under Tax Code, §151.3182.

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

Filed with the Office of the Secretary of State on May 24, 2022.

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Jennifer Burleson
Director, Tax Policy
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3061

The Comptroller of Public Accounts proposes new §9.3061, concerning installment payments of taxes on property not directly damaged in a disaster or emergency area.

This new section implements Senate Bill 742, Section 4, 87th Legislation, R.S. (2021). This section closely follows the language in Tax Code, §31.033 so as not to create an undue burden on the taxing units that adopt this installment payment option and to allow them flexibility to create their own policies that comply with the requirements in Tax Code, §31.033.

Subsection (a) provides definitions for terms used in the proposed new section.

Subsection (b) establishes the types of property and taxes to which the proposed new section applies.

Subsection (c) establishes that Tax Code, §31.032(b), (b-1), (c), and (d) apply to the payment of taxes to a taxing unit that has adopted an installment payment option for taxes owed on property described in the proposed new section.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: 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.

Mr. Reynolds also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed new rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711 or to the email address: ptad.rulecomments@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.*

This new section is authorized by Tax Code, §31.033 (d), which requires the comptroller to adopt rules to implement Tax Code, §31.033.

This new section implements Tax Code, §31.033, concerning Installment Payments of Taxes on Property in Disaster Area or Emergency Area That Has Not Been Damaged as a Result of Disaster or Emergency.

§9.3061. Installment Payments of Taxes on Property Not Directly Damaged in a Disaster or Emergency Area.

(a) In this section, "disaster", "disaster area", "emergency", and "emergency area" have the meanings assigned by Tax Code, §31.032(g).

(b) This section only applies to:

(1) Real property that is owned or leased by a business entity that is located in a disaster or emergency area, has not been damaged as a direct result of the disaster or emergency, and that had gross receipts in the entity's most recent federal income tax year or state franchise tax annual period that were not more than the amount calculated as provided by Tax Code, §31.032(h);

(2) tangible personal property that is owned or leased by a business entity described in paragraph (1) of this subsection; and

(3) taxes imposed by the taxing unit before the first anniversary of the disaster or emergency.

(c) For a taxing unit that has adopted an installment-payment plan under Tax Code, §31.033, Tax Code, §31.032(b), (b-1), (c), and (d) apply to the payment by a person of that taxing unit's taxes imposed on property that the person owns.

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

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202058
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 10, 2022
For further information, please call: (512) 475-2220

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §77.70

The Texas Department of Licensing and Regulation withdraws proposed amended §77.70 which appeared in the February 11, 2022, issue of the *Texas Register* (47 TexReg 624).

Filed with the Office of the Secretary of State on May 26, 2022

TRD-202202045
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 26, 2022
For further information, please call: (512) 475-4879

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

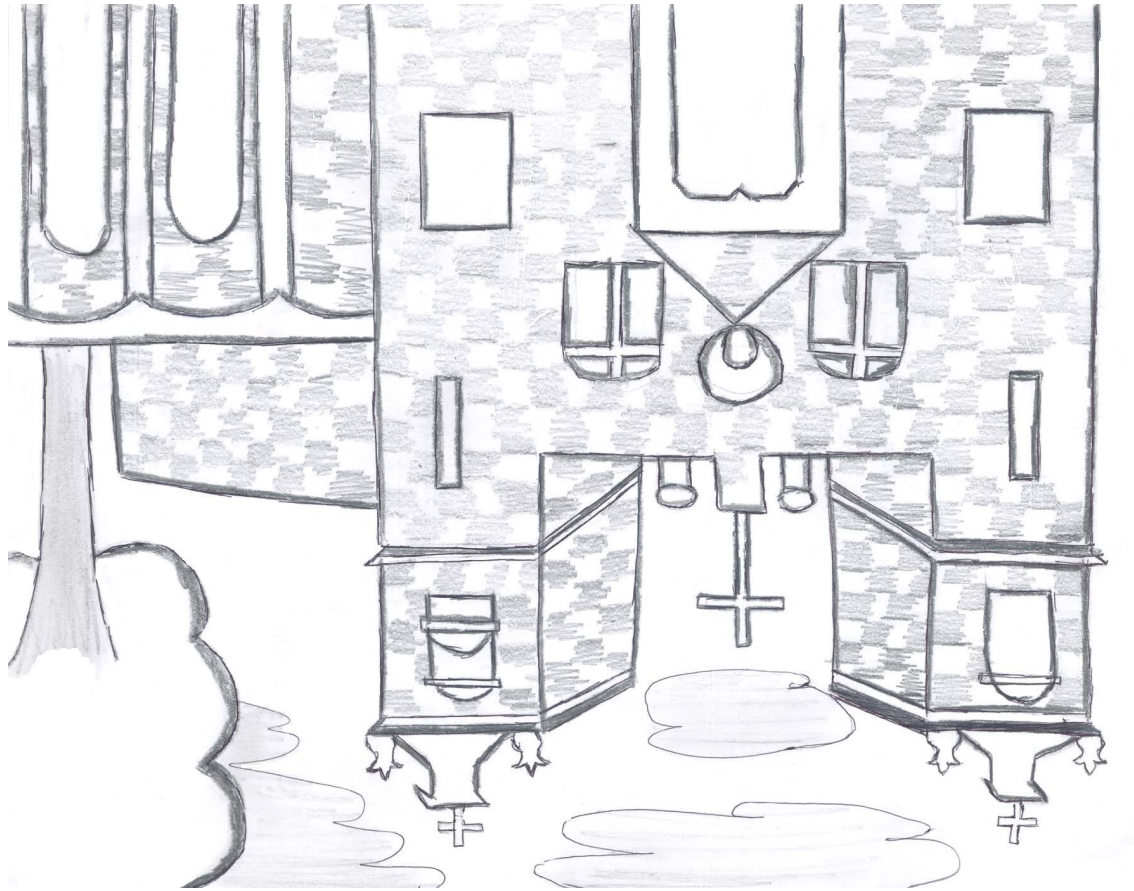
22 TAC §573.52

The Texas Board of Veterinary Medical Examiners withdraws proposed amended §573.52 which appeared in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8895).

Filed with the Office of the Secretary of State on May 27, 2022

TRD-202202104
John Hargis
General Counsel
Texas Board of Veterinary Medical Examiners
Effective date: May 27, 2022
For further information, please call: (512) 693-4500x3

♦ ♦ ♦



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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.57

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.57, relating to Power Outage Alert Criteria. The commission adopts this rule with changes to the proposed rule as published in the December 31, 2021 issue of the *Texas Register* (46 TexReg 9148). This rule establishes the criteria for the content, activation, and termination of regional and statewide power outage alerts as required by Tex. Gov't. Code §411.301(b), enacted by the 87th Texas Legislature as part of Senate Bill 3. The rule will be republished.

The commission received comments on the proposed rule from AEP Texas Inc., CenterPoint Energy Houston Electric, LLC, and Texas-New Mexico Power Company (collectively, Joint TDUs); Electric Reliability Council of Texas, Inc. (ERCOT); Entergy Texas Inc. (ETI); the Lower Colorado River Authority and Lower Colorado River Authority Transmission Services (collectively, LCRA); Office of Public Utility Counsel (OPUC); Oncor Electric Delivery Company LLC (Oncor); Southwestern Electric Power Company (SWEPCO); Southwestern Public Service Company (SPS); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperative's Inc. (TEC); Texas Public Power Association (TPPA); and Vistra Corporation (Vistra).

"Commission"

ERCOT observed that the proposed rule makes several references to "the commission," such as notices that must be provided to the commission and that the commission can recommend the issuance, update, or termination of a power outage alert. ERCOT recommended that the commission consider expanding these references to include the executive director or a designee. ERCOT argued this would provide more flexibility to the commission in developing its power outage alert processes without requiring future rulemaking projects. ERCOT further argued that codifying "that certain actions may only be given to or taken by the Commission results in practical and legal limitations on the ability to rapidly respond to a dynamic situation" and provided the example of ERCOT operators rescinding firm load-shed instructions at 1 a.m. on a Saturday night. In this instance, ERCOT continued, it would be desirable to terminate the power outage alert, but that under the proposed rule it may require the commission to convene an emergency open meeting subject to specific legal requirements, such as audio, visual, and internet-broadcasting requirements.

Commission Response

The commission agrees with ERCOT that, for practical reasons, the duties associated with the rule are more properly assigned to the executive director. Imminent system-wide load shed events would require a swift response under circumstances that would make convening an open meeting impractical or even impossible. Therefore, the commission modifies the rule to replace all references to "the commission" with "the executive director." The commission further adds language to adopted subsection (c) allowing a designee to act on behalf of the executive director under this section. Under the adopted rule, the executive director or a designee will receive notices from ERCOT and transmission service providers (TSPs) in power regions outside of ERCOT of likely system-wide load shed events, request additional information as necessary, and recommend the issuance, update, or termination of power outage alerts as circumstances require.

Termination criteria

Joint TDUs argued the proposed rule should be modified because Tex. Gov't. Code §411.301(b) directs the commission to adopt termination criteria for a power outage alert and recommended that such criteria should be "when the reliability coordinator terminates or cancels the 'load shed instructions' that gave rise to the power outage alert's activation."

Commission Response

The commission agrees with Joint TDUs that Tex. Gov't. Code §411.301(b) requires the commission to establish criteria for terminating a power outage alert. The commission modifies subsection (c) to allow the executive director to recommend the termination of a power outage alert when the conditions that led to the issuance of the power outage alert are no longer applicable and are unlikely to recur in the near future.

Accessibility

TPPA recommended the commission ensure, to the best of its ability, that language or accessibility barriers do not prevent Texans from receiving a power outage alert in a meaningful way. TPPA recommended that the power outage alert be, at a minimum, issued in English and Spanish and be integrated with TDD/TTY equipment.

Commission Response

The commission declines to modify the rule to address accessibility and language barriers as recommended by TPPA. DPS is the state agency tasked with administering this program and is-

suing power outage alerts, and the commission does not control the methods, platforms, or technology that will be used to broadcast these alerts to the public.

Proposed 25.57(a) - "Purpose and Applicability"

Proposed subsection (a) establishes the applicability of proposed §25.57. LCRA requested the commission modify this section, in part, to read: "This section applies to *power outage alerts issued in* the Electric Reliability Council of Texas (ERCOT) *power region* and {transmission service providers} in power regions in Texas other than the ERCOT power region."

Commission Response

The commission declines to modify the applicability language as requested by LCRA. This subsection identifies the entities required to comply with the rule, not the areas of the state in which it applies. The rule requires action by, and therefore applies to, ERCOT and TSPs in power regions other than ERCOT.

The commission adds a clarification to subsection (a) that power outage alerts can be regional or statewide. The commission also replaces all references to the "ERCOT power region" throughout the rule with references to the "ERCOT region," for consistency with §25.5 (relating to Definitions).

Proposed 25.57(b)(1) - "Load Shed Instructions"

Proposed paragraph (b)(1) defines the term "load shed instructions" as "directions given by a reliability coordinator to a TSP to reduce electricity usage along its systems by a described amount to prevent longer and larger outages for an entire power region."

TEC argued that the proposed definition of "load shed instructions" does not "include all instances of system-wide load shed" and objected to the phrase "longer and larger outages." Specifically, TEC asserted that controlled outages may not always prevent "longer and larger outages" from occurring when a reliability coordinator issues an emergency alert.

Commission Response

The commission agrees with TEC that "longer and larger outages" is an unnecessary inclusion in the definition of "load shed instructions" and removes the phrase from the adopted definition.

LCRA recommended the definition of "load shed instructions" be revised to include "distribution service providers, or their agents." ERCOT recommended revisions to the definition of "load shed instructions" to include the potential for the reliability coordinator to issue direction to a TSP's agent.

Commission Response

The commission agrees with LCRA and ERCOT that it is appropriate to include a reference to a TSP's agent in the definition of "load shed instructions." However, a reference to distribution service providers is unnecessary. In the context of this rule, the phrase load shed instructions is used to identify the trigger for notice requirements applicable to ERCOT and TSPs outside of ERCOT, and the trigger for the executive director to consider recommending the issuance of a power outage alert. Because each of these triggers is based on load shed instructions being issued system-wide, it is sufficient to link the trigger to the issuance of instructions to a TSP or its agent, as recommended by ERCOT, even if load shed instructions may also be issued to distribution service providers.

LCRA and ERCOT recommended the definition clarify the reliability coordinator's directions are for firm load shed, because there are other actions that a reliability coordinator may instruct a TSP or its agent to take that would result in reduced electricity usage but not warrant a power outage alert.

Commission Response

The commission agrees with LCRA and ERCOT that the definition of "load shed instructions" should specify that the reliability coordinator is directing a TSP or its agent to shed firm load and modifies the definition accordingly.

Proposed 25.57(c) - Issuance of a power outage alert

Proposed subsection (c) describes the process by which the commission may recommend DPS issue a power outage alert based on information it has received from ERCOT and TSPs in power regions other than ERCOT. Under proposed subsection (c), the issuance of a power outage alert may be recommended when load shed instructions have been issued or are likely to be issued because the system-wide power supply in one or more power regions within Texas may be inadequate to meet demand. Paragraph (c)(3) states that in determining whether to recommend the issuance of a power outage alert, the commission will consider the likelihood of system-wide load shed instructions being issued, the expected length of time the load shed instructions will be in effect, and any other relevant information.

TPPA noted that the proposed rule appears to require ERCOT and TSPs outside of ERCOT to report all load shed instructions, including local events confined to an area served by a single TSP. TPPA argued that local events are best handled by local TSPs and requested clarification on whether the commission would require entities to issue a power outage alert for events that affect only one TSP.

Commission Response

The commission agrees with TPPA that local providers are best equipped for communicating with customers concerning localized power outages. Power outage alerts will only be issued on a system-wide basis and the commission clarifies throughout the rule that ERCOT and TSPs in power regions other than ERCOT only need to notify the commission when the load shed instructions are issued, or are likely to be issued, on a system-wide basis.

The commission modifies the language of (c) to assign authority related to power outage alerts to the executive director or a designee and adds provisions related to the update and termination of power outage alerts as described in the commission's response to general comments above. The commission also reorganizes the information in this subsection for clarity.

ERCOT and ETI each proposed that the commission modify the rule to state that the commission may recommend the issuance of a power outage alert based on information received from ERCOT "or" TSPs in power regions other than ERCOT, rather than ERCOT "and" these TSPs. These commenters argued stated that the conditions in each power region are often different, and the commission may need to issue a power outage alert in one region even if other regions are not at risk of load shed.

Commission Response

The commission agrees with ERCOT and ETI that the executive director should consider information related to a particular power region when determining whether to issue a power outage alert for that region and modifies the rule accordingly.

Joint TDUs argued that the primary criterion for activating a power outage alert should be the issuance of actual load shed instructions. Joint TDUs opposed the issuance of power outage alerts if load shed instructions are only "likely to be issued," stating that this criterion is vague and "does not appear to allow for the proactive engagement of the customer-facing entities such as the TDUs prior to activation."

Vistra interpreted the language of proposed (c) as establishing a substantial certainty standard for the issuance of a power outage alert and requested that the commission verify that this is correct. Vistra further requested that the commission more uniformly incorporate substantial certainty language into this subsection by modifying it to read: "{t}he issuance of a {power outage alert} may be recommended when load shed instructions have been issued or are likely to be issued because the system-wide power supply in one or more power regions within Texas 'is likely to be' inadequate to meet demand."

Commission Response

The commission disagrees with Joint TDUs that power outage alerts should only be issued when load shed instructions have been issued. The purpose of a power outage alert is to notify the public when there is likely to be system-wide power outages so that the public can stay informed and make any necessary preparations. If the executive director has information that reliably predicts a system-wide load shed event, the executive director may recommend the issuance of a power outage alert at that time. However, the commission agrees with Vistra that a power outage alert should only be issued when there is an actual likelihood of supply being inadequate to meet demand and modifies the rule accordingly.

TPPA noted that the language permitting the recommendation of a power outage alert when "the system-wide power supply... may be inadequate to meet demand" could be interpreted in multiple ways and requested that the commission clarify the language. TPPA acknowledged that this language was statutory, but argued that the public should understand under what conditions a power outage alert might be issued.

Commission Response

The commission declines to modify the provision. A power outage alert serves to notify the public of an actual or imminent potential system-wide load shed event to assist members of the public in responding to such an event. Broadly speaking, this would occur when system-wide available generation, minus essential operating reserves, is projected to be less than system-wide load. However, the energy industry is rapidly evolving, as are the technologies, resource types, and services in each power region. A precise activation standard for power outage alerts could quickly become obsolete or apply unevenly across power regions. Accordingly, the adopted rule provides the executive director flexibility to consider the available information in context when determining whether to recommend the issuance of a power outage alert.

OPUC, SWEPCO, and Joint TDUs each argued that the commission should provide information to certain groups prior to, or contemporaneously with, the issuance of a power outage alert. OPUC recommended the rule require the commission to notify OPUC when a power outage alert is issued. OPUC asserts this sharing of information will facilitate timely and efficient responses by OPUC to customer concerns.

Joint TDUs and SWEPCO recommended the rule allow for engagement of TDUs, TSPs, and other customer-facing entities prior to the issuance of a power outage alert. Joint TDUs also requested that all market participants receive the alert notice that the commission sends to DPS to initiate a power outage alert. SWEPCO asked that the content of power outage alerts be shared with TSPs to ensure consistent communication.

Commission Response

The commission declines to modify the rule to include any provisions governing how the commission communicates information related to power outage alerts to OPUC, utilities, or other interested parties. This rule establishes the criteria for the issuance and termination of power outage alerts. It does not govern the commission's other communications during load shed events. The commission communicates urgent information to outside parties through a variety of different avenues. While many of these communications may take place concurrently with the issuance of a power outage alert, the actual issuance of power outage alerts rests with DPS, not the commission - the alert notice that Joint Utilities request the commission provide TDUs, for example, is not a commission-developed notice and will only be utilized by the commission for its intended purpose. Moreover, formalizing any requirements governing how and when the commission must communicate with third parties about the substance of power outage alerts may reduce the flexibility and efficiency with which the commission can recommend power outage alerts or disseminate other critical information.

Proposed 25.57(c)(2) - Alternative communications

Proposed paragraph (c)(2) permits the commission to, concurrently with the issuance of a power outage alert, disseminate information related to the power outage alert by alternative means of communication.

Vistra and TCPA opposed proposed paragraph (c)(2). Specifically, Vistra and TCPA expressed concern for the rule language which states that the commission may disseminate information "as an alternative to recommending the issuance of a system-wide power outage alert." Because the commission currently has the authority to pursue those alternatives, Vistra argued that this language should be deleted so the proposed rule is focused solely on the issuance of power outage alerts. TCPA similarly recommended deleting the same phrase from the proposed rule for clarity and consistency.

Commission Response

The commission agrees with Vistra and TCPA that the commission already has the authority to pursue the alternative information dissemination methods in proposed paragraph (d)(2) and removes the provision from the adopted rule.

Proposed §25.57(d)(1)(A) and §25.57(d)(1)(B) - ERCOT notifications to the commission

Proposed subparagraph (d)(1)(A) requires ERCOT to notify the commission when its forecasts indicate system-wide generation supply may be insufficient to meet demand within the next 48 hours. Proposed subparagraph (d)(1)(B) requires ERCOT notify the commission when it issues or is preparing to issue load shed instructions.

TEC argued that the 48-hour period prescribed in subparagraphs (d)(1)(A) may be too long. TEC noted that "in most cases either the market will respond to a potential supply shortfall or ERCOT

will issue Reliability Unit Commitment (RUC) instructions or take other reliability actions to manage the shortfall."

Commission Response

The commission disagrees with TEC that 48 hours is too far in advance for ERCOT to notify the commission that its forecasts indicate that system-wide supply may be inadequate to meet system-wide demand. The 48-hour period does not trigger the issuance of a power outage alert but begins the exchange of information between ERCOT and the commission regarding the possibility of a load shed event. The executive director will not recommend the issuance of a power outage alert without first considering whether system-wide load shed can be avoided by other ERCOT reliability actions.

Vistra recommended replacing the phrase "may be insufficient" from proposed subparagraph (d)(1)(A) with the phrase "is likely to be insufficient" for consistency with the phrase "likely to be" as used in proposed subsection (c). Vistra also argued that this change would ensure that power outage alerts are not issued so often that customers become desensitized to them. TCPA similarly recommended that the commission replace the word "may" in proposed subparagraph (d)(1)(A) with "are likely to" for consistency with the issuance threshold under proposed subsection (c).

Commission Response

The commission agrees with Vistra and TCPA to conform the language in paragraph (d)(1)(A) and subsection (c) for consistency and to ensure that power outage alerts are not issued in the absence of an actual or likely system-wide load shed event. The commission updates the language in paragraph (d)(1)(A) accordingly.

ERCOT recommended striking the phrase "or is preparing to issue" from proposed subparagraph (d)(1)(B) so that ERCOT is not issuing multiple notices for the same emergency event.

Commission Response

The commission agrees with ERCOT that proposed (d)(1)(B) would require ERCOT to provide the commission with redundant notices and modifies the rule as recommended. ERCOT is required to notify the executive director when ERCOT's forecasts indicate that system-wide generation supply is likely to be insufficient to meet demand or when ERCOT issues system-wide load shed instructions. The precise details and timing of these notices will be determined by ERCOT, in consultation with commission staff, under adopted paragraph (d)(4).

Proposed §25.57(d)(2)(D) - Initiating circumstances

Proposed subparagraph (d)(2)(D) requires ERCOT to include, if applicable and known, the initiating event or circumstances that prompted the load shed instructions.

Vistra and TCPA argued the rule should focus on communicating the risk of power outages and not the reasons for the power outages. Specifically, Vistra recommended the commission "generally refrain from identifying causes in a power outage alert unless such information is both unambiguously and holistically understood at the time as well as applicable to the preparatory nature of the alert." Vistra was concerned that subparagraph (d)(2)(D) indicated that power outages might contain information about the cause of power outages before the causes are fully understood.

Commission Response

Subparagraph (d)(2)(D) outlines the information that ERCOT is required to provide to the executive director to enable the executive director to determine whether to recommend the issuance of a power outage alert. This information will not be included in the content of the power outage alert unless it is deemed relevant and of assistance to electricity customers in accordance with paragraph (f)(4). However, the commission does modify the language of subparagraph (d)(2)(D) to clarify that ERCOT must also provide, if applicable and known, the initiating event or circumstances that might prompt the issuance of load shed instructions to account for notices provided in accordance with subparagraph (d)(1)(A).

Proposed §25.57(d)(3) - ERCOT updates to the commission

Proposed paragraph (d)(3) requires ERCOT to notify the commission if any of the conditions listed under paragraph (d)(1), the paragraph outlining when ERCOT must initially notice the commission, have materially changed or are no longer applicable.

ERCOT recommended alternative language to clarify that ERCOT notify the commission when "in ERCOT's judgment" there has been a material change in any of the considerations listed under paragraph (d)(1). ERCOT further recommended that an additional provision be added to the proposed rule that incorporates by reference §25.362(e) (relating to ERCOT Governance) which imposes requirements on access to information held by ERCOT.

Commission Response

The commission modifies adopted paragraph (d)(3) to require ERCOT to notify the executive director when system-wide load shed instructions have been recalled or when, in ERCOT's judgment, there are material changes in ERCOT's forecasts. This modification incorporates ERCOT's proposed edit that would require ERCOT to notify the commission of changes in its forecast that ERCOT deems material, while also requiring ERCOT to notify the executive director when it recalls load shed instructions. During any load shed event, ERCOT will be in constant communication with the commission and the executive director, but these two basic notification triggers are necessary to ensure a power outage alert is not active for longer than necessary.

The commission declines to incorporate §25.362(e) by reference, as it is unnecessary. The provisions of §25.362(e) already apply to information provided under this section.

Proposed §25.57(e) - Power outage alert for power regions other than ERCOT

Proposed subsection (e) details the timing and content of the notification requirements for TSPs in power regions other than ERCOT. Proposed paragraph (e)(1) requires a TSP to notify the commission when it has received load shed instructions. Proposed paragraph (e)(2) prescribes the content of the notice. Proposed paragraph (e)(3) further requires the TSP to notify the commission when the applicable reliability coordinator has recalled load shed instructions as well as information regarding power outages and restoration within the TSP's service territory.

SPS recommended revisions to proposed paragraphs (e)(1) and (e)(3) to clarify that notifications are only required for system-wide load shed events. SPS asserted that TSPs have the best capabilities for handling load shed events that are localized to their service territory.

Commission Response

The commission agrees that power outage alerts should only be issued for system-wide load shed events and modifies the rule accordingly.

SWEPCO recommended that the regional transmission operator (RTO), not a TSP, be the entity responsible for notifying the commission of load shed events, under proposed subsection (e). SWEPCO maintained that a TSP should not bear the responsibility of notifying the commission and further contended that proposed subsection (e) should be revised to be consistent with proposed subsection (d) for the ERCOT power region, which states that ERCOT, as the RTO, is responsible for notifying the commission. SWEPCO explained that the "RTO has clear and immediate visibility of grid conditions" and that the content of notices and additional information as required under other provisions of the proposed rule can only be answered by the RTO and not a TSP. Therefore, SWEPCO stated that requiring a TSP to notify the commission in non-ERCOT regions of Texas would only result in a delay of the power outage alert issuance and divert a TSP's operators from executing the reliability coordinator's load shed directive.

Commission Response

The commission disagrees with SWEPCO that the RTO should be responsible for notifying the executive director of load shed events outside of the ERCOT region. Unlike ERCOT, the commission does not have oversight authority over RTOs outside of the ERCOT region and cannot direct the actions of these RTOs. The executive director will, of course, consider any relevant information provided by these RTOs in determining whether to recommend the issuance or termination of a load shed event.

The commission expects notification as soon as possible when a TSP has been given load shed instructions and getting the information from the TSPs is the most expedient way for the commission to obtain the information. Since the RTOs outside of ERCOT are responsible for operating the electric grid in multiple states, and report to multiple state, federal and local jurisdictions, the commission believes it will be more expedient to receive load shed instruction information from the TSPs. The commission has required ERCOT to perform this function in the ERCOT territory because the commission has jurisdictional oversight over ERCOT. Therefore, in areas outside of ERCOT, the commission will require the TSPs to inform the commission when they are given load shed instructions.

The commission also disagrees with SWEPCO's arguments that load shed events do "not leave time for... dissemination of information about the event" and that the time it would take to notify the commission that it had received load shed instructions would interfere with its ability to properly execute the load shed instructions and even, potentially, delay the issuance of the power outage alert. Under these same conditions, SWEPCO states that "it will be important for SWEPCO to immediately be aware of {a power outage alert's} contents" and that the commission should provide details about the power outage alert "simultaneous with or even prior to the issuance to the public." The multi-medium customer communication activities that SWEPCO indicated it conducts demonstrates that communicating basic information surrounding a load shed event to the commission is not an unduly burdensome requirement. Moreover, the commission has simplified the notification requirements, as described below, and will work with TSPs in accordance with subsection (e)(3) to address any remaining logistical concerns.

TEC argued that the requirement for a TSP to provide notice to the commission should be "limited in scope to only reflect the information the transmission service provider can confidently provide." TEC recommended deleting the phrase "any available information regarding power outages," under proposed paragraph (e)(3) as overly broad and potentially including substantial amounts of data that is either irrelevant or publicly available. Lastly, TEC stated that deletion of the phrase would avoid duplication of the requirements in sections (e)(2)(B) and (e)(3) regarding power restoration.

Commission Response

The commission agrees with TEC that a TSP should only be required to provide information that it can confidently provide. Accordingly, the commission strikes proposed paragraph (e)(2) from the rule.

The commission disagrees with TEC that a TSP should not be required to provide information on power outages and the expectation for power restoration in proposed paragraph (e)(3). This information will help the executive director assess how long the power outage alert should remain in effect. However, in response to TEC's concerns, the commission modifies the rule to only require a summary of information regarding power outages and the expectation of power restoration.

Proposed §25.57(e)(4) - Notification procedures

Proposed subparagraph (e)(4) requires a TSP covered by this section to establish a procedure, in consultation with commission staff, to provide the commission with notifications required under subsection (e).

TEC requested clarification on the procedures to provide notifications under proposed paragraph (e)(4). TEC requested that the commission establish the procedures for guidance such as an emailed template, rather than require TSPs to create a new procedure. TEC stated that such guidance would promote the commission's goals of receiving consistent, standardized information regarding load shed instructions outside of ERCOT.

ETI argued that messaging to public and governmental officials during circumstances when a load shed event is imminent will require close coordination with all entities involved. ETI supported proposed paragraph (e)(4) as providing an avenue for TSPs to work with commission staff to establish a procedure to provide the required notifications that fits the specific circumstances of each TSP.

Commission Response

The commission agrees with ETI that the notification procedures must be flexible to fit the specific circumstances of each TSP and declines to adopt a standard form or procedure as requested by TEC. However, the commission does not oppose the development of a uniform approach by TSPs and commission staff. Accordingly, the commission adds language to paragraph (e)(3) allowing commission staff to develop a standardized process for providing the required notifications.

Proposed 25.57(f) - Content of power outage alert

Proposed subsection (f) requires the power outage alert to include a statement that electricity customers may experience a power outage and, when known and as applicable: whether load shed is occurring or expected to occur; a brief explanation of the circumstances surrounding the load shed event; where an electricity customer should seek assistance while the customer's power may be out; a disclaimer that a customer may not neces-

sarily experience load shed; and any other information deemed relevant and of assistance to electricity customers.

Joint TDUs commented that proposed subsection (f) lacks substantive criteria for a power outage alert. Specifically, Joint TDUs argued that the criteria in proposed subsection (f) does not include information regarding the "expected duration, mitigation measures being undertaken, and the number of potentially affected customers within the affected power region." Joint TDUs recommended providing more substantive information in the power outage alert.

Vistra and TCPA argued the rule should focus on communicating the risk of power outages and not the reasons for the power outages. Specifically, Vistra recommended the commission "generally refrain from identifying causes in a power outage alert unless such information is both unambiguously and holistically understood at the time as well as applicable to the preparatory nature of the alert." TCPA argued that the commission has many other channels to communicate additional information.

Commission Response

The commission agrees with Vistra and TCPA that the content of a power outage alert should focus on the risk of power outages and, accordingly, strikes the requirement that a power outage alert contain a brief explanation of the circumstances surrounding the load shed event. Similarly, the commission declines to require that power outage alerts include information on expected duration, mitigation measures, and affected customer counts, as recommended by Joint TDUs. The commission and service providers can communicate this information to customers when available through other channels. Moreover, this information may still be provided in a power outage alert if "deemed relevant and of assistance to customers."

The commission also modifies the language of adopted subsection (f) to allow a power outage alert to contain the required information or instructions on how to obtain the required information. This language will allow DPS the flexibility to disseminate helpful information to customers in the most efficient manner possible during a system-wide load shed event.

Proposed §25.57(f)(4) - Customer assistance

Proposed §25.57(f)(4) requires a power outage alert to provide, when known and applicable, where an electricity customer can seek assistance while the electricity customer's power may be out. TPPA requested clarification on what kinds of "assistance" the commission is envisioning this involves to better facilitate a coordinated response.

Commission Response

The commission is constantly working with industry and its partner governmental agencies to improve the content of communications with the public surrounding electricity-related events. The customer assistance information provided in power outage alerts may include links to websites with additional information about safety procedures during the power outage, and telephone numbers for contacting emergency services. However, the commission will not limit the discretion of DPS or its other state agency partners to identify and provide other information that may be helpful to the public during load shed events.

The new rule is adopted under PURA §14.002, which provides the Public Utility Commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also adopted under Tex. Gov't. Code §411.301, which requires the commission to adopt criteria for the content, activation, and termination of power outage alerts.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and Tex. Gov't. Code §411.301.

§25.57. Power Outage Alert Criteria.

(a) Purpose and Applicability. This section establishes criteria for the activation, content, and termination of regional and statewide power outage alerts as required by Tex. Gov't Code §411.301(b). This section applies to the Electric Reliability Council of Texas (ERCOT) and to transmission service providers in power regions in Texas other than the ERCOT region.

(b) Definitions.

(1) Load shed instructions--Directives given by a reliability coordinator to a transmission service provider or its agent to reduce firm load along its systems by a prescribed amount.

(2) System-wide--The entirety of a power region.

(c) Issuance and termination of a power outage alert. The executive director may recommend the Texas Department of Public Safety issue, update, or terminate a power outage alert. A designee may act on behalf of the executive director under this section.

(1) The executive director may recommend the Texas Department of Public Safety issue a power outage alert statewide or for one or more specific power regions in Texas. The issuance of a power outage alert may be recommended for power regions in which system-wide load shed instructions have been issued or are likely to be issued because the system-wide power supply is likely to be inadequate to meet demand.

(2) In determining whether to recommend the issuance of a power outage alert, the executive director will consider the likelihood of system-wide load shed instructions being issued, the expected length of time the load shed instructions will be in effect, and any other relevant information. In determining whether to recommend the issuance of a power outage alert in the ERCOT region, the executive director will consider information received from ERCOT under subsection (d) of this section. In determining whether to recommend the issuance of a power outage alert in a power region other than the ERCOT region, the executive director will consider information received from transmission service providers in that power region under subsection (e) of this section.

(3) The executive director may recommend the termination of a power outage alert when the conditions that led to the issuance of the power outage alert are no longer applicable and are unlikely to recur in the near future.

(d) Power outage alerts for the ERCOT region.

(1) ERCOT must notify the executive director when:

(A) ERCOT's forecasts indicate system-wide generation supply is likely to be insufficient to meet demand within the next 48 hours; or

(B) ERCOT issues system-wide load shed instructions.

(2) A notice under paragraph (1) of this subsection must include any available, relevant information to assist the executive director in determining whether to recommend the issuance of a power outage alert and what information should be included in the power outage alert. The notice must include, but is not limited to:

(A) Whether system-wide load shed instructions have been issued;

(B) Whether system-wide power supply is forecasted to be insufficient to meet demand and, if so, an estimated time when load shed instructions may be issued;

(C) If applicable and known, an estimated time when load shed instructions may be recalled; and

(D) If applicable and known, the initiating event or circumstances that prompted or might prompt the issuance of load shed instructions.

(3) ERCOT must notify the executive director when system-wide load shed instructions have been recalled or when, in ERCOT's judgment, there are material changes in ERCOT's forecasts. This notice must include information on any of the remaining conditions listed under paragraph (1) of this subsection that are still applicable.

(4) ERCOT must establish a procedure, in consultation with commission staff, to provide the executive director with notifications required under this subsection.

(5) Upon request by the executive director, ERCOT must provide additional information and updates.

(e) Power outage alerts for power regions other than the ERCOT region.

(1) A transmission service provider in a power region other than the ERCOT region must notify the executive director when it has received system-wide load shed instructions from the applicable reliability coordinator.

(2) The transmission service provider must notify the executive director when the applicable reliability coordinator has recalled the system-wide load shed instructions. The transmission service provider's notice must include a summary of any available information regarding power outages and the expectation for power restoration within its service territory.

(3) A transmission service provider subject to this subsection must establish a procedure, in consultation with commission staff, to provide the executive director with notifications required under this subsection. Commission staff may develop a form, internet portal, or other standardized process for providing the executive director with notifications required under this subsection. If commission staff develops such a standardized process, a transmission service provider's procedure must utilize this standardized process.

(4) Upon request by the executive director, a transmission service provider must provide additional information and updates.

(f) Power outage alert content. When known and as applicable, the power outage alert must provide the following information or instructions on how to obtain the following information:

(1) Whether system-wide load shed is occurring or expected to occur imminently;

(2) A statement that an electricity customer may experience a power outage;

(3) Where an electricity customer can seek assistance while the electricity customer's power may be out; and

(4) Any other information deemed relevant and of assistance to electricity customers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2022.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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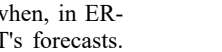
For further information, please call: (512) 936-7244



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 77, §§77.10, 77.20, 77.22, 77.41, 77.42, and the proposed repeal of existing rules at §§77.92, 77.94 - 77.110, regarding the Service Contract Providers and Administrators Program. The amendments and repeals are adopted without changes to the proposed text as published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 624). These rules will not be republished.

The Commission also withdrew proposed amendments to an existing rule at 16 TAC, Chapter 77, §77.70, as published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 624).

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC Chapter 77 reflect the addition of residential service contracts as a fourth type of service contract under Tex. Occ. Code, Chapter 1304, Service Contract Providers and Administrators. The addition of residential service contracts to this chapter occurred during the 87th regular Legislative Session in House Bill 1560, §§4.01 - 4.13. House Bill 1560 repealed Tex. Occ. Code, Chapter 1303 and transferred regulatory oversight of residential service contracts from the Texas Real Estate Commission to the Texas Department of Licensing and Regulation effective September 1, 2021.

HB 1560 directs the Department to enact rules related to residential service contacts by June 1, 2022. The rules relating to residential service contracts as they existed at the Texas Real Estate Commission were transferred without changes to 16 TAC Chapter 77 on September 1, 2021. These transferred rules served as placeholders while the Department determined what rule amendments or rule repeals were necessary to bring rules relating to residential service contracts into line with the previously existing service contract provider rules at 16 TAC, Chapter 77, §§77.1 - 77.91.

The adopted rules repeal the entirety of the transferred rules at 16 TAC Chapter 77, §§77.92, 77.94 - 77.110. The remaining adopted rules streamline and consolidate the transferred rules into the previously existing service contract provider rules at 16 TAC Chapter 77, §§77.1 - 77.91. The adopted rules also amend the previously existing service contract provider rules at 16 TAC, Chapter §§77.1 - 77.91 to reflect the addition of residential ser-

vice contracts to Tex. Occ. Code, Chapter 1304 and 16 TAC Chapter 77.

The adopted rules are necessary to create similar requirements between the provision and administration of residential service contracts and the three other types of service contracts under 16 Tex. Occ. Code, Chapter 1304 and 16 TAC, Chapter 77, §§77.1 - 77.91.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §77.10(6)(C) by updating language and adding residential service contracts to the previously existing definition of "Service Contract" in §77.10(6)(D).

The adopted rules amend §77.20 by adding a requirement for all service contract providers to notify the Department of any changes to a controlling person within 30 days of the change occurring.

The adopted rules amend §77.22 by adding a requirement for all service contract administrators to notify the Department of any changes to a controlling person within 30 days of the change occurring.

The adopted rules amend §77.41 by adding a provision to allow residential service contract providers to use a reimbursement insurance policy as a form of financial security.

The adopted rules amend §77.42 by adding a minimum amount of financial security deposit for a residential service contract provider.

The adopted rules repeal §§77.92 and 77.94 - 77.110 because they are no longer necessary and are subsumed by the existing and proposed amended rules in §§77.1 - 77.91.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 11, 2022, issue of the *Texas Register* (47 TexReg 624). The deadline for public comments was March 14, 2022. The Department received comments from three interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment--The department received one comment from The Service Contract Industry Council (SCIC) which describes itself "as a national trade association whose member companies include manufacturers, service contract providers, administrators, and retailers offering service contracts covering motor vehicles, homes, and consumer goods throughout the country".

SCIS's comment concerned a proposed amendment to 16 TAC §77.70(k). The proposed amendment would require licensees to report new "affiliations" to TDLR within 30 days of entering the relationship. SCIC opposed this proposed rule amendment stating that it added a requirement for licensees and was so broad in the term "affiliation" or "affiliate", that it did not sufficiently define or explain when such a relationship would give rise to the required reporting.

The SCIC is otherwise in favor of the proposed rules to 16 TAC Chapter 77.

Department Response--The department reviewed the proposed amended rule at 16 TAC §77.70(k) and engaged in an internal analysis of the comment. It was determined that the proposed amended rule should be removed from this rule packet. Department staff thank the SCIC for its comment and participation in this rule making effort.

Comment--The department received one comment from the National Home Service Contract Association (NHSCA) which describes itself as representing residential service contract providers on regulatory matters throughout the nation for more than two decades.

NHSCA's comment mirrored the SCIC comment described above in relation to a proposed amendment to 16 TAC §77.70(k). The proposed amendment would require licensees to report new "affiliations" to TDLR within 30 days of entering the relationship. NHSCA stated that this proposed amendment was so broad in the term "affiliation" or "affiliate", that it did not define or explain when such a relationship gave rise to the required reporting. It further stated that the proposed amended rule created a new requirement for licensees.

The NHSCA is otherwise in favor of the proposed rules to 16 TAC Chapter 77.

Department Response--The department reviewed the proposed amended rule at 16 TAC §77.70(k) and engaged in an internal analysis of the comment. It was determined that the proposed amended rule should be removed from this rule packet. Department staff thank the NHSCA for its comment and participation in this rule making effort.

Comment--The department received three comments from American Home Shield (AHS), a licensee offering residential service contracts in Texas and nationwide.

AHS' first comment mirrored those from SCIC And NHSCA in relation to a proposed amendment to 16 TAC 77.70(k). The proposed amendment would add a requirement for licensees to report all "affiliations" to TDLR within 30 days of entering the relationship. AHS echoed the concerns raised by SCIC And NHSCA about the proposed amended rule and stated that it was both too broad and did not sufficiently define an "affiliate" or "affiliation".

Department Response--The department reviewed the proposed amended rule at 16 TAC §77.70(k) and engaged in an internal analysis of the comment. It was determined that the proposed amended rule should be removed from this rule packet.

Comment--AHS submitted a second comment relating to the proposed amended rule at 16 TAC §77.41(c). The proposed amended rule states that a provider may use a reimbursement insurance policy as financial security under Texas Occupations Code §1304.157(c). AHS opined that the rule should be further amended to specifically state that providers who fall under Texas Occupations Code §1304.157(c) do not have to comply with mandates found in 16 TAC §77.41(b)(1) - (2).

The rule as currently written states that the requirements in 16 TAC §77.41(b)(1) - (2) relate to providers using a reimbursement policy insurance as financial security under Texas Occupations Code §1304.151 and §1304.152.

Department Response--After a thorough evaluation of the comment and the proposed rule, it was determined that TDLR will not further amend 16 TAC §77.41(c). The proposed amended rule at 16 TAC §77.41(c) clearly does not apply to providers using reimbursement insurance policy as financial security under Texas Occupations Code §1304.157(c). Therefore, the requested addition to the proposed amendment is redundant and unnecessary.

Department staff thank AHS for its comment and participation in this rule making effort.

Comment--AHS submitted a third comment relating to TDLR Form SCP012 and asking for specific changes to the form. TDLR Form SCO012 is an internally drafted form that is not subject to the rule making process. Accordingly, TDLR staff will review comments relating to the form for potential changes separate from this rulemaking process.

Department Response--Department staff thank AHS for its comment and participation in this rule making effort.

AHS is otherwise in favor of the proposed rules to 16 TAC Chapter 77.

COMMISSION ACTION

At its meeting on May 24, 2022, the Commission adopted the proposed amendments to existing rules at 16 TAC, Chapter 77, §§77.10, 77.20, 77.22, 77.41, 77.42, and the proposed repeal of existing rules at §§77.92, 77.94 - 77.110, as published in the *Texas Register.*

The Commission also adopted the withdrawal of §77.70 in response to the public comments.

16 TAC §§77.10, 77.20, 77.22, 77.41, 77.42

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and Tex. Occ. Code, Chapter 1304, as amended by HB 1560 during the 87th Legislative session, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Tex. Occ. Code, Chapter 1304, as amended by HB 1560 during the 87th regular Legislative session. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2022.

TRD-202202046
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: June 15, 2022
Proposal publication date: February 11, 2022
For further information, please call: (512) 475-4879

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16 TAC §§77.92, 77.94 - 77.110

STATUTORY AUTHORITY

The adopted repeals are adopted under Texas Occupations Code, Chapters 51 and Tex. Occ. Code, Chapter 1304, as amended by HB 1560 during the 87th Legislative session, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and Tex. Occ. Code, Chapter 1304, as amended by HB 1560 during the 87th regular Legislative session. No other statutes, articles, or codes are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2022.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: February 11, 2022
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SEVERANCE PAYMENTS

19 TAC §105.1021

The Texas Education Agency adopts an amendment to §105.1021, concerning severance payment reporting and reductions in Foundation School Program (FSP) funding. The amendment is adopted without changes to the proposed text as published in the March 4, 2022 issue of the *Texas Register* (47 TexReg 1052) and will not be republished. The adopted amendment modifies the rule to include open-enrollment charter schools, as authorized by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021.

REASONED 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 adopted amendment implements HB 189 by applying the rule's provisions to open-enrollment charter schools.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 4, 2022, and ended April 4, 2022. Following is a summary of the public comments received and the corresponding agency responses.

Comment: The Texas-American Federation of Teachers (Texas AFT) commented that §105.1021(a)(2) should include in the def-

inition of superintendent anyone who receives a severance or payout.

Response: The agency disagrees. TEC, §11.201, applies only to superintendents, which limits §105.1021 to superintendents and does not allow for any employee who may receive a severance or payout.

Comment: Texas AFT and Texas State Teachers Association (TSTA) commented that the rule should require school districts and charter schools to disclose all contracts that include a severance provision or payout provision for any charter school employee no matter the employee's actual title.

Response: The agency disagrees. TEC, §11.201, applies only to superintendents, which limits §105.1021 to superintendents.

Comment: Texas AFT commented that the reporting form should include a column showing the cost of the severance package on a per-pupil basis. Also, the organization commented that there should be a biennial report created for the legislature so they can see the data and make additional legislative changes if needed.

Response: This comment is outside of the scope of the proposed rulemaking; however, the agency provides the following clarification. Information related to superintendent severance payments is reported annually to the State Board of Education.

Comment: TSTA stated that the definition of "superintendent" in §150.1201(a)(2) does not make clear that a superintendent must also include an administrator serving under another title as though that person were the superintendent of a school district. TSTA commented that the definition should include the administrator serving as educational leader and chief executive officer of the school district or open-enrollment charter school as though that person were the superintendent of a school district.

Response: The agency disagrees. TEC, §12.104(b-4), requires that severance payments be reported for the administrator serving as educational leader and chief executive officer of a charter school as though that person were the superintendent of a school district. In addition, amended §105.1021(a)(2) specifies that "superintendent" means the educational leader and chief executive officer of an independent school district or open-enrollment charter school. Schools cannot avoid reporting severance payments by use of a title other than superintendent.

STATUTORY AUTHORITY. The amendment is adopted 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 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).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 25, 2022.

TRD-202202029

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 14, 2022
Proposal publication date: March 4, 2022
For further information, please call: (512) 475-1497

CHAPTER 120. OTHER TEXAS ESSENTIAL KNOWLEDGE AND SKILLS

The State Board of Education (SBOE) adopts the repeal of §120.1 and amendments to §§120.3, 120.5, 120.7, and 120.9, concerning Texas Essential Knowledge and Skills (TEKS) for character traits. The repeal and amendments are adopted without changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 860) and will not be republished. The adopted revisions update the standards for positive character traits to align with the requirements of Senate Bill (SB) 123, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: In 2019, the 86th Texas Legislature passed House Bill 1026, requiring the SBOE to integrate positive character traits into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate. The legislation required the SBOE to include the following positive character education traits in the standards: courage; trustworthiness, including honesty, reliability, punctuality, and loyalty; integrity; respect and courtesy; responsibility, including accountability, diligence, perseverance, and self-control; fairness, including justice and freedom from prejudice; caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity; good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; school pride; and gratitude. The legislation also required school districts and open-enrollment charter schools to adopt a character education program that includes the required positive character traits. At the January 2020 SBOE meeting, a discussion item on character traits instruction was presented to the Committee of the Full Board. The committee requested that staff prepare a proposal to add essential knowledge and skills for positive character traits as a new chapter in the Texas Administrative Code. The SBOE adopted the TEKS for positive character traits effective August 1, 2021. The new TEKS were implemented beginning with the 2021-2022 school year.

The 87th Texas Legislature, Regular Session, 2021, passed SB 123, which required the SBOE to add personal skills to the TEKS for positive character traits. The legislation added responsible decision-making skills, interpersonal skills, and self-management skills to the required topics to be addressed in the standards.

The adopted amendments to §§120.3, 120.5, 120.7, and 120.9 add the required new topics to the TEKS for positive character traits in Kindergarten-Grade 12. The changes will be implemented beginning with the 2022-2023 school year.

In addition, §120.1, which contains implementation language for the subchapter, is being repealed. Implementation language is included as new subsection (a) for each course.

The SBOE approved the proposed revisions for first reading and filing authorization at its January 28, 2022 meeting and for second reading and final adoption at its April 8, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began February 25, 2022, and ended at 5:00 p.m. on April 1, 2022. The SBOE also provided an opportunity for registered oral and written comments at its April 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and responses.

Comment. The Texas American Federation of Teachers (AFT) expressed support for the proposed amendments because they align with statute and allow flexibility of implementation as either direct or embedded instruction in a district's curriculum.

Response. The SBOE agrees that the standards as proposed are aligned to recent statutory changes and allow appropriate flexibility.

Comment. Texas AFT stated that the proposed standards for positive character traits support districts' ongoing efforts to support the well-being of students and to establish a foundation for 21st century workplace skills that are essential in students' future education and career endeavors.

Response. The SBOE agrees that the standards as proposed support development of positive character traits and personal skills.

Comment. Texas AFT expressed support for the emphasis on compassion, empathy, and cooperation while recognizing multiple perspectives and differences among people in the TEKS for positive character traits because they are skills that are vitally important to responsible citizenship and meaningful civic discourse.

Response. The SBOE agrees that the standards as proposed support the development of positive character traits, including responsible citizenship.

Comment. One parent expressed concern with the TEKS for positive character traits and stated that the authorizing legislation was not subject to debate.

Response. The SBOE disagrees that the standards are cause for concern. Additionally, the SBOE provides the following clarification. Texas Education Code (TEC), §29.906, requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12 and identifies specific traits and personal skills that must be addressed.

Comment. One parent expressed opposition to the TEKS for positive character traits and stated that it is a parent's duty, not the school's, to teach their children character.

Response. The SBOE agrees that parents are also responsible for teaching character. However, the SBOE disagrees that character should not be addressed in the state curriculum standards. Additionally, the SBOE provides the following clarification. TEC, §29.906, requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12 and identifies specific traits and personal skills that must be addressed.

Comment. One parent expressed opposition to the TEKS for positive character traits and stated that the SBOE should limit themselves to just teaching good manners.

Response. The SBOE disagrees and has determined that the TEKS as proposed are appropriate. Additionally, the SBOE provides the following clarification. TEC, §29.906, requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12 and identifies specific traits and personal skills that must be addressed.

Comment. One parent expressed opposition to the TEKS for positive character traits and stated that the standards were subjective and reflect beliefs that may not be shared by all.

Response. The SBOE disagrees and has determined that the standards as proposed are objective. Additionally, the SBOE provides the following clarification. TEC, §29.906, requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12 and identifies specific traits and personal skills that must be addressed.

Comment. Three parents stated that the TEKS for positive character traits were just an excuse for teaching social and emotional learning and supporting a particular vendor.

Response. The SBOE disagrees that the standards are an excuse for teaching social and emotional learning and has determined that the proposed revisions are appropriate and are not designed to support content from any specific vendor. Additionally, the SBOE provides the following clarification. TEC, §29.906, requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12 and identifies specific traits and personal skills that must be addressed.

SUBCHAPTER A. CHARACTER TRAITS

19 TAC §120.1

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021, which requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 25, 2022.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: February 25, 2022
For further information, please call: (512) 475-1497

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19 TAC §§120.3, 120.5, 120.7, 120.9

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021, which requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts new §§127.317, 127.318, 127.323, 127.783, and 127.784, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). Sections 127.317, 127.323, 127.783, and 127.784 are adopted without changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 865) and will not be republished. Section 127.318 is adopted with changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 865) and will be republished. The new sections update the CTE TEKS for courses in the career clusters for education and training and science, technology, engineering, and mathematics (STEM) to ensure the standards are up to date.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the January 2021 meeting, the board held a work session to discuss the timeline for the TEKS review and revision process and associated activities, including updates to State Board for Educator Certification teacher assignment rules and certification examinations, adoption of instructional materials, and the completion of the Texas Resource Review. Texas Education Agency (TEA) staff provided an overview of CTE programs of study and a skills gap analysis that is being completed to inform review and revision of the CTE TEKS.

Also during the January 2021 meeting, staff provided an update on plans for the review and revision of CTE courses that satisfy a science graduation requirement as well as certain courses in the health science; education and training; and STEM programs of study. Applications to serve on these CTE TEKS review work groups were posted on the TEA website in December 2020. TEA staff provided SBOE members applications for approval to serve on a CTE work group at the January 2021 SBOE meeting. Additional applications were provided to SBOE members in February and March 2021. Work groups were convened from March-July 2021 to develop recommendations for the CTE courses. At the June 2021 SBOE meeting, a discussion item for proposed new 19 TAC Chapter 130 was presented to the board. At the September 2021 SBOE meeting, one representative from each CTE TEKS review committee provided invited testimony to the SBOE Committee of the Full Board.

The SBOE postponed first reading and filing authorization for a selection of courses from the education and training and STEM programs of study: §127.317, Child Development; §127.318, Child Guidance; §127.323, Human Growth and Development; §127.783, Engineering Design and Presentation I; and §127.784, Engineering Design and Presentation II, to allow additional time to review and finalize recommendations. Education and training CTE TEKS work groups met in October and November 2021 to continue finalizing their recommendations for revisions to the CTE TEKS.

New §§127.317, 127.318, 127.323, 127.783, and 127.784 update the CTE TEKS to ensure the standards for the courses are up to date. In order to avoid confusion regarding the year of implementation, the new sections include an implementation subsection with specific implementation language for each course.

Currently, CTE courses are codified in 19 TAC Chapter 130. Due to the current structure of 19 TAC Chapter 130, there are not enough section numbers available in Chapter 130 to add all of the proposed new courses in their assigned subchapters. To accommodate the addition of these new courses and future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and that chapter has been renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." The move of CTE subchapters from Chapter 130 to Chapter 127 will take place over time as the TEKS in each subchapter are revised. In order to avoid confusion regarding the year of implementation, the new

sections include an implementation subsection with specific implementation language for each course.

At adoption, a technical edit was made in §127.318(d)(1) to correct the lettering of subparagraphs (A)-(F).

The SBOE approved the proposed new sections for first reading and filing authorization at its January 28, 2022 meeting and for second reading and final adoption at its April 8, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised CTE TEKS. The effective date is 20 days after filing as adopted with the *Texas Register.*

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began February 25, 2022, and ended at 5:00 p.m. on April 1, 2022. The SBOE also provided an opportunity for registered oral and written comments at its April 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and responses.

Comment. One teacher expressed support for the addition of new §74.11(k), which would allow districts to exempt students from specific CTE prerequisites for CTE courses that may satisfy a mathematics or science graduation requirement if the district determines the student is not using the course to complete a program of study.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator expressed concern that there will be significant negative impacts if there is not an exemption for CTE prerequisite courses for students not earning a program of study.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that requiring law enforcement classes as a mandatory prerequisite for all students taking Forensic Science limits districts' ability to recruit new students into the law enforcement program of study beyond the students' sophomore year and is not supported by the commenter's district Law and Public Safety District Advisory Committee.

Response. This comment is outside the scope of the proposed rulemaking.

SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §§127.317, 127.318, 127.323

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to allow by rule a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2) and (b-17).

§127.318. Child Guidance (Two Credits), Adopted 2021.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available, this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Child Development or Child Development Associate Foundations. Students shall be awarded two credits for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Child Guidance is a course that addresses the knowledge and skills related to child growth and guidance, equipping students to develop positive relationships with children and effective care-

giver skills. Students use these skills to promote the well-being and healthy development of children, strengthen a culturally diverse society, and pursue careers related to the care, guidance, and education of children, including those with special needs. Instruction may be delivered through school-based laboratory training or through work-based delivery arrangements such as cooperative education, mentoring, and job shadowing.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate effective verbal, nonverbal, written, and electronic communication skills;

(B) demonstrate effective collaboration skills within the workplace;

(C) identify characteristics of effective leaders and team members;

(D) explain the importance of time management to succeed in the workforce;

(E) apply work ethics and professionalism in a job setting; and

(F) use appropriate problem-solving and critical-thinking skills.

(2) The student practices ethical and legal responsibilities associated with providing childcare services. The student is expected to:

(A) apply ethical codes of conduct in a childcare setting;

(B) create coherent written communication between parents and childcare staff;

(C) identify regulatory and compliance guidelines for maintaining documentation in childcare settings, including educational, personnel, and public records;

(D) advocate through appropriate means for children when necessary;

(E) comply with laws and regulations related to childcare services;

(F) determine potential uses and management of technology, media, and resources to foster healthy child development; and

(G) employ safeguards to prevent misuse and abuse of technology and media with children.

(3) The student analyzes childcare options for children of various ages. The student is expected to:

(A) compare the financial considerations of childcare options;

(B) examine criteria for selecting quality childcare; and

(C) review minimum standards for licensing and regulations for center-based and home-based programs.

(4) The student analyzes responsibilities that promote health and wellness of children. The student is expected to:

(A) monitor student behavior for signs of physical illness and emotional disturbances in children;

(B) practice child guidance techniques that contribute to the health and wellness of children such as adequate rest, exercise, safety, and sanitation;

(C) apply procedures for creating safe environments for children; and

(D) create a meal plan for children, including nutritious snacks, following appropriate food guidelines.

(5) The student analyzes the effect of play in the development of children. The student is expected to:

(A) create examples of play that promote the physical, intellectual, emotional, and social development of children; and

(B) implement strategies to encourage socially appropriate constructive and creative play, including indoor and outdoor activities.

(6) The student applies appropriate guidance techniques for children of various ages and developmental levels, including those with special needs. The student is expected to:

(A) discuss the various types of guidance and their effects on children;

(B) determine and apply appropriate guidance techniques; and

(C) distinguish between guidance techniques and behavior that could be considered inappropriate, harmful, or abusive.

(7) The student will implement appropriate strategies and practices for optimizing the development of children ages birth through twelve months, including those with special needs. The student is expected to:

(A) create and implement activities for the development of sensory skills;

(B) create and implement activities for the development of language skills;

(C) create and implement activities for the development of physical and motor skills; and

(D) create and implement activities for the development of social skills.

(8) The student will implement appropriate strategies and practices for optimizing the development of children ages 13 months through 35 months, including those with special needs. The student is expected to:

(A) create and implement lesson plans for the development of physical skills;

(B) create and implement lesson plans for the development of vocabulary and language skills;

(C) create and implement lesson plans for the development of appropriate mathematics skills;

(D) create and implement lesson plans for the development of appropriate science skills; and

(E) create and implement lesson plans for the development of social and emotional skills.

(9) The student will implement appropriate strategies and practices for optimizing the development of children ages 3 through 5 years, including those with special needs. The student is expected to:

(A) create and implement lesson plans for the development of physical skills;

(B) create and implement lesson plans for the development of appropriate reading and language skills;

(C) create and implement lesson plans for the development of appropriate mathematics and problem-solving skills;

(D) create and implement lesson plans for the development of appropriate science skills; and

(E) create and implement lesson plans for the development of social and emotional skills.

(10) The student makes informed career decisions that reflect personal, family, and career goals. The student is expected to:

(A) analyze the impact of career decisions on personal and family goals;

(B) assess personal interests, aptitudes, and abilities needed in the childcare profession;

(C) develop short- and long-term career goals;

(D) evaluate employment and entrepreneurial opportunities; and

(E) evaluate educational requirements for early childhood development and services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §127.783, §127.784

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to allow by rule a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2) and (b-17).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 79. UNPROFESSIONAL CONDUCT

22 TAC §79.5

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §79.5 (Associating with an Unlicensed Individual) with non-substantive changes from the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1169). The rule will be republished. Texas Occupations Code §201.5025(a)(5 - 7) (Prohibited Practices by Chiropractor or License Applicant) forbids a licensee from associating with an individual whose license to practice chiropractic has been suspended or revoked in any jurisdiction. This language does not explicitly prohibit a licensee from associating with an individual who surrendered a license to the Board in lieu of disciplinary action, although the Board has that authority implicitly through other statutes and Board rules.

The Board offers licensees who have been arrested for serious violent or financial crimes the option of immediately surrendering their licenses to the Board instead of going through the time and expense of a revocation hearing at the State Office of Admin-

istrative Hearings. The Board believes this option better fulfills its duty to protect the public than an administrative hearing by quickly removing from the ranks of licensed chiropractors an individual who has shown to be a danger to patients.

Occupations Code §201.5025(a)(5 - 7) prohibits licensees from associating with, in any manner, individuals who have had their license to practice chiropractic suspended or revoked in any jurisdiction. This new rule makes explicit that the prohibition includes individuals who have surrendered their licenses in lieu of discipline.

Comment: The Board received one comment about the proposed rule from the Texas Chiropractic Association (TCA). TCA suggested that the rule include a qualifier to make clear that the prohibition on associating with an individual whose license was revoked, suspended, or surrendered only extends to a chiropractor's professional activities as a chiropractor. The Board agrees with the suggestion and has modified the text accordingly.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this new rule.

§79.5. Associating with an Unlicensed Individual.

(a) In the practice of chiropractic, a licensee may not knowingly employ, contract with, or associate with an individual whose license to practice chiropractic has been:

(1) suspended;

(2) revoked; or

(3) surrendered in lieu of discipline.

(b) In the practice of chiropractic, a licensee may not knowingly employ, contract with, or associate with an individual who has been convicted of the unlawful practice of chiropractic in any jurisdiction.

(c) A licensee may not aid or abet the practice of chiropractic by an unlicensed individual.

(d) A licensee violating this section is subject to disciplinary action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202202021
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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CHAPTER 80. COMPLAINTS

22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §80.1, concerning Duty to Respond to Complaint, without changes to the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1170). The rule will not be republished.

This amendment simply removes email as one of the two formal methods the Board must use to notify an individual of a complaint filed against him. The amendment keeps the procedural requirement that the Board must notify an individual of a complaint by registered mail.

The Board received no comments about the proposed amendment.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.205, which requires the Board to adopt rules concerning the investigation of a complaint filed with the Board.

No other statutes or rules are affected by this amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §80.3, concerning Disciplinary Guidelines, without changes to the text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1171). The rule will not be republished.

New subsection (m) will make it a violation of Board rules if an individual fails to comply with any term of an agreed order approved by the Board.

The Board received no comments about the proposed amendment.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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CHAPTER 81. ENFORCEMENT ACTIONS AND HEARINGS

22 TAC §81.2

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §81.2 (Notice for Enforcement and Other Hearings) without changes to the proposed text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1172). The changes remove the requirement that, before a hearing at the State Office of Administrative Hearings (SOAH), a notice of hearing and formal complaint be sent to a respondent by registered or certified mail. The rule will not be republished.

Under the Board's current rules, the Board uses certified mail to initially notify a respondent of a complaint by sending a certified notice of complaint to the respondent's physical address on file with the Board (22 TAC §80.1), which gives notice to the respondent of the allegations against him. During complaint investigations, respondents (and their attorneys, if any) usually formally communicate with Board investigators and legal staff using email. All Board licensees are required to maintain a current physical and email address on file with the Board (22 TAC §72.13). Additionally, as of March 2020, SOAH requires all parties in a contested case to use the eFileTexas electronic filing system for judicial filings, including for notices of hearing and formal complaint; certified mail is no longer a procedural requirement.

By removing the certified mail requirement, the Board anticipates saving over $500 per year in mailing costs.

The Board received no comments about the proposed amendment.

The amended rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes or rules are affected by this amended rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Christopher Burnett
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Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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CHAPTER 82. INTERNAL BOARD PROCEDURES

22 TAC §82.4

The Texas Board of Chiropractic Examiners (Board) adopts new 22 TAC §82.4 (Family Leave Pool) without changes as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1173). Government Code §§661.021 - 661.028 requires state agencies to adopt rules to permit agency employees to contribute earned hours to a family leave pool. The rule will not be republished.

The Board received no comments concerning the new rule.

The rule is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Government Code §§661.021 - 661.028, which requires the Board to establish a family leave pool by rule.

No other statutes or rules are affected by this new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 742. MINIMUM STANDARDS FOR LISTED FAMILY HOMES
SUBCHAPTER E. BASIC CARE REQUIREMENTS

26 TAC §742.508

The Texas Health and Human Services Commission (HHSC) adopts new §742.508, concerning What are the requirements when an infant is engaged in tummy time, in Texas Administrative Code, Title 26, Part 1, Chapter 742, Minimum Standards for Listed Family Homes, Subchapter E, Basic Care Requirements.

New §742.508 is adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1442). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule is necessary to implement the portion of Senate Bill 225, 87th Legislature, Regular Session, 2021, that amended Chapter 42, Texas Human Resources Code by adding Section 42.04291. This new section requires the HHSC Executive Commissioner to establish standards for listed family homes and reg-

istered and licensed child-care homes for the visual and auditory supervision of an infant engaged in time on the infant's stomach while awake (that is, tummy time). To meet this legislative requirement, HHSC Child Care Regulation proposed a new rule for listed family homes that specifies supervision requirements for when an infant is engaged in tummy time activities.

COMMENTS

The 31-day comment period ended April 18, 2022. During this period, HHSC received three comments regarding the proposed rule from a parent-advocate. A summary of the comments relating to the rule and HHSC's responses follows.

Comment: One commenter requested that HHSC revise the rule to require a maximum distance the caregiver can be from an infant who is positioned in tummy time.

Response: HHSC disagrees with the comment and declines to revise the rule. This additional requirement could restrict the caregiver's ability to meet the needs of other children because there is a great deal of variability in the layout of child-care homes and the caregiver must move around frequently to meet the needs of other children in care (for example, diapering, administering first aid, preparing food and bottles, etc.). It would also be difficult to enforce. HHSC believes that the proposed requirements that the caregiver be able to see and hear an infant positioned for tummy time activities, and intervene as necessary to ensure the safety of the infant, sufficiently address any risk to the infant engaged in tummy time activities.

Comment: One commenter requested that HHSC revise the rule to require the caregiver be in the same room with an infant who is positioned in tummy time.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC believes that the proposed requirements that a caregiver be able to see and hear an infant positioned for tummy time activities, and intervene as necessary to ensure the safety of the infant, sufficiently address any risk to the infant engaged in tummy time activities. Because there is a great deal of variability in the layout of child-care homes and the caregiver must move around frequently to meet the needs of other children in care, this additional requirement could restrict the caregiver's ability to meet the needs of other children (for example, diapering, administering first aid, preparing food and bottles, etc.). It would also be difficult to enforce. In response to the comment, HHSC will add additional guidance to the Helpful Information box that follows the rule in the minimum standards courtesy publication, further clarifying that the caregiver must remove the infant from tummy time when the caregiver must step away from the room and the caregiver will not be able to see and hear the infant.

Comment: One commenter requested that HHSC revise the rule to require a time limit for tummy time as recommended by pediatricians. For example, two minutes maximum for a child three months of age with no signs of distress.

Response: HHSC disagrees with the comment and declines to revise the rule. The American Academy of Pediatrics (AAP) recommends an infant be placed on the tummy 2-3 times each day for a short period of time (3-5) minutes, increasing the amount of time as the baby shows enjoyment of the activity. While this information is included in the Helpful Information box that follows the rule in the courtesy publication of the minimum standards, the AAP recommendation may not be appropriate for all infants and would be difficult to enforce. Additionally, the rule contains requirements for (1) repositioning the infant to maintain the infant's comfort and safety; and (2) moving the infant to a safe sleeping space if the infant falls asleep while positioned on the infant's stomach. Each of these components of the rule serve as a preventative measure to ensure an infant is not left in tummy time for too long. In response to the comment, HHSC will add a link in the Helpful Information box to the AAP website that offers information and resources about tummy time.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2022.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: June 13, 2022
Proposal publication date: March 18, 2022
For further information, please call: (512) 438-3269

CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

26 TAC §747.2318

The Texas Health and Human Services Commission (HHSC) adopts new §747.2318, concerning What are the requirements when an infant is engaged in tummy time, in Texas Administrative Code, Title 26, Part 1, Chapter 747, Minimum Standards for Child-Care Homes, Subchapter H, Basic Care Requirements for Infants.

New §747.2318 is adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1443). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule is necessary to implement the portion of Senate Bill 225, 87th Legislature, Regular Session, 2021, that amended Chapter 42, Texas Human Resources Code by adding Section 42.04291. This new section requires the HHSC Executive Commissioner to establish standards for listed family homes and registered and licensed child-care homes for the visual and auditory supervision of an infant engaged in time on the infant's stomach while awake (that is, tummy time). To meet this legislative requirement, HHSC Child Care Regulation proposed a new rule for licensed and registered child-care homes that specifies su-

pervision requirements for when an infant is engaged in tummy time activities.

COMMENTS

The 31-day comment period ended April 18, 2022. During this period, HHSC received four comments regarding the proposed rule from a registered child-care home provider and a parent-advocate. A summary of the comments relating to the rule and HHSC's responses follows.

Comment: One commenter stated that she does not place the infants in her care in tummy time because a child will develop the muscles needed to hold its head up while on a caregiver's shoulder. She further stated the proposed rule is unenforceable and HHSC should focus instead on better education for caregivers regarding early childhood development.

Response: HHSC disagrees with the comment and declines to revise the rule. The rule is legislatively mandated. The proposed rule does not require a caregiver to utilize tummy time but will help ensure the safety of an infant engaged in these activities. With regard to enforcement, HHSC is accustomed to monitoring and enforcing supervision rules in child-care homes and will monitor and enforce the proposed rule as it does other supervision rules. Lastly, while the proposal did not include child development training, HHSC agrees that training in early childhood development is a critical component of caring for infants in a child-care setting. HHSC does not provide training for caregivers but does share training resources to aid caregivers in obtaining training from various sources. HHSC also requires the primary caregiver in a licensed child-care home or registered child-care home to obtain 30 hours of annual training in various topics, including child development.

Comment: One commenter requested that HHSC revise the rule to require a maximum distance the caregiver can be from an infant who is positioned in tummy time.

Response: HHSC disagrees with the comment and declines to revise the rule. This additional requirement could restrict the caregiver's ability to meet the needs of other children because there is a great deal of variability in the layout of child-care homes and the caregiver must move around frequently to meet the needs of other children in care (for example, diapering, administering first aid, preparing food and bottles, etc.). It would also be difficult to enforce. HHSC believes that the proposed requirements that the caregiver be able to see and hear an infant positioned for tummy time activities, and intervene as necessary to ensure the safety of the infant, sufficiently address any risk to the infant engaged in tummy time activities.

Comment: One commenter requested that HHSC revise the rule to require the caregiver be in the same room with an infant who is positioned in tummy time.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC believes that the proposed requirements that a caregiver be able to see and hear an infant positioned for tummy time activities and intervene as necessary to ensure the safety of the infant, sufficiently address any risk to the infant engaged in tummy time activities. Because there is a great deal of variability in the layout of child-care homes and the caregiver must move around frequently to meet the needs of other children in care, this additional requirement could restrict the caregiver's ability to meet the needs of other children (for example, diapering, administering first aid, preparing food and bottles, etc.). It would also be difficult to enforce. In response to the comment, HHSC will add additional guidance to the Helpful Information box that follows the rule in the minimum standards courtesy publication further clarifying that the caregiver must remove the infant from tummy time when the caregiver must step away from the room and the caregiver will not be able to see and hear the infant.

Comment: One commenter requested that HHSC revise the rule to require a time limit for tummy time as recommended by pediatricians. For example, two minutes maximum for a child three months of age with no signs of distress.

Response: HHSC disagrees with the comment and declines to revise the rule. The American Academy of Pediatrics (AAP) recommends an infant be placed on the tummy 2-3 times each day for a short period of time (3-5) minutes, increasing the amount of time as the baby shows enjoyment of the activity. While this information is included in the Helpful Information box that follows the rule in the courtesy publication of the minimum standards, the AAP recommendation may not be appropriate for all infants and would be difficult to enforce. Additionally, the rule contains requirements for (1) repositioning the infant to maintain the infant's comfort and safety; and (2) moving the infant to a safe sleeping space if the infant falls asleep while positioned on the infant's stomach. Each of these components of the rule serve as a preventative measure to ensure an infant is not left in tummy time for too long. In response to the comment, HHSC will add a link in the Helpful Information box to the AAP website that offers information and resources about tummy time.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

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

SUBCHAPTER F. RATE REVIEW FOR HEALTH BENEFIT PLANS

28 TAC §§3.501 - 3.507

The Commissioner of Insurance adopts new Subchapter F, concerning the rate review process for individual and small group major medical coverage, to be added to 28 TAC Chapter 3. Sections 3.501 - 3.503, 3.506, and 3.507 are adopted without changes to the proposed text published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1844). Section 3.504 and §3.505 were revised in response to public comments. The rules will be republished.

REASONED JUSTIFICATION. The new subchapter is necessary to implement Insurance Code Chapter 1698, as added by Senate Bill 1296, 87th Legislature, 2021. Insurance Code Chapter 1698 requires the Commissioner to establish a process under which the Texas Department of Insurance (TDI) will review health benefit plan rates and rate changes for compliance with state and federal law, including rules establishing geographic rating areas. Adopted Subchapter F establishes a process to review the rates for individual and small group major medical coverage as provided by Chapter 1698. The new subchapter includes §§3.501 - 3.507. These sections state the rule's purpose and applicability, identify the rating standards, establish geographic rating areas, and provide guidance to address certain additional factors and requirements related to the review process and public disclosure requirements.

Federal law requires that federal regulators review certain health insurance rate increases if states do not do so. Prior to the passage of SB 1296, federal regulators were reviewing these rates because Texas law has not provided a mechanism for state review since 2013. Insurance Code Chapter 1698 returns the rate review process to the state, consistent with federal rate review rules in 45 CFR Part 154.

The adopted sections of the new subchapter are described in the following paragraphs.

Section 3.501. Section 3.501(a) describes the purpose of the subchapter, which is to implement Insurance Code Chapter 1698 and establish an effective rate review program consistent with 45 CFR §154.301, concerning CMS's Determinations of Effective Rate Review Programs.

Subsection (b) explains that the subchapter applies to plans subject to Insurance Code Chapter 1698, while subsection (c) clarifies that the subchapter does not apply to (1) short-term limited-duration insurance; (2) grandfathered health plan coverage; and (3) individual limited scope plans, including dental benefit plans and vision benefit plans. The plans listed under subsection (c) are not subject to the same federal rating standards and are reviewed instead for compliance with other existing state rating standards, including Insurance Code Chapter 560; Insurance Code Chapter 1501, Subchapter E; and 28 TAC §26.11.

Section 3.502. Section 3.502 defines the following terms for use in the subchapter: "actuarial value (AV)," "cost-sharing reductions (CSRs)," "essential health benefits (EHBs)," "federal medical loss ratio standard," "HHS," "issuer," "index rate," "plan," "product," "qualified actuary," "single risk pool," and "Unified Rate Review Template (URRT)."

Section 3.503. Section 3.503 requires that all rate filings under Subchapter F comply with all applicable state and federal requirements, including specified provisions from the Insurance Code, United States Code, and Code of Federal Regulations.

Section 3.504. Section 3.504 addresses how issuers may vary rates based on geographic rating area. Insurance Code Chapter 1698 grants the Commissioner the authority to implement rules establishing geographic rating areas to use when reviewing the rates in compliance with 42 USC §300gg.

Subsection (a) provides that issuers may vary the rates based on rating areas, which are determined using the policyholder's or contract holder's address.

Subsection (b) establishes 27 rating areas that issuers must use for rates, beginning in 2023. Each rating area consists of a certain number of Texas counties in compliance with 45 CFR §147.102(b)(3). Currently, Texas uses the federal default rating areas, composed of 25 Metropolitan Statistical Areas and one area that includes all rural areas. The adopted new rating areas place rural areas with nearby metropolitan areas and are based around health care districts and the regions defined by the Texas Health and Human Services Commission. The newly established rating areas could have a positive effect on rural communities by generating competition in areas where a limited variety of health plans is currently available.

In the proposal, King County was mistakenly listed in rating area 24 (Wichita Falls) instead of rating area 14 (Lubbock). That mistake is corrected in the section as adopted.

Section 3.505. Section 3.505(a) prohibits an issuer from using a rate with respect to a plan if the rate filing has not been filed with TDI for review, does not comply with applicable rating standards, or has been withdrawn.

Subsection (b) requires that issuers submit an annual rate filing no later than June 15 for any individual or small group market plan that is to be issued on or after January 1 in the following calendar year. Subsection (b) also prohibits an issuer from modifying an annual rate filing later than October 1 prior to the calendar year for which the filing was submitted.

Subsection (c) applies only to small group issuers and allows them to submit a rate filing for a quarterly rate change as long as the filing is submitted at least 105 days before the effective date of the rate change.

Subsection (d) requires that rate filings include the index rate for the single risk pool and reflect every product and plan that is part of the single risk pool in the applicable market. Subsection (d) also advises that issuers are not required to enter CSR plan variations separately.

Subsection (e) requires issuers to submit rate filings under Subchapter F through the electronic system designated by TDI in accordance with any technical instructions provided for the electronic system. The electronic system currently in use is the System for Electronic Rate and Form Filings (SERFF); additional technical guidance on filing is contained in TDI rules in 28 TAC Chapter 3, Subchapter A, and in 28 TAC §11.301.

Subsection (f) requires that rate filings made under Subchapter F include the following: (1) the URRT; (2) written descriptions justifying rate increases of 15% or more in a 12-month period; (3) rating filing documentation, including an actuarial memorandum signed by a qualified actuary; (4) a rates table that identifies the applicable rate for each plan depending on an individual's rating area, tobacco use, and age; (5) an enrollment spreadsheet that contains the information specified in subparagraphs (A) through

(C) of the paragraph; and (6) an actuarial value (AV) and cost-sharing factor spreadsheet.

The AV and cost-sharing factor spreadsheet included with each rate filing must include a certain induced-demand factor based on the plan type (e.g., bronze plans, silver plans, gold plans, and platinum plans). The spreadsheet must also include a CSR adjustment factor of 1.35-applicable to individual silver plans on the exchange-that accounts for the average costs attributable to CSRs. In setting this factor, TDI considered the different CSR plan variations with respect to (1) the eligibility criteria for CSRs; (2) the potential distribution of enrollees; (3) the maximum AV that may be provided across all silver plans; and (4) variation in induced demand.

Subsection (g) states that TDI will publish templates on its website that issuers may use to submit the required data.

Subsection (h) requires that an issuer provide any additional information needed to evaluate the rate filing upon TDI's request.

Subsection (i) requires an issuer to submit current and prior year data on enrollment, premiums, and claims by June 15, when the issuer does not intend to issue a plan that would require a rate filing for the next calendar year but has enrollment in a plan that is subject to Subchapter F in the current or prior year. This data enables TDI to consider medical claims trends and understand the impact of a change to an issuer's market participation. In response to comment, the timeframe for which current year cumulative data must be reported was shortened from May 31 to March 31.

Section 3.506. Section 3.506(a) provides that TDI will evaluate whether the issuer has provided sufficient data and documentation upon receipt of a rate filing under Subchapter F and may request additional information as necessary to make a determination on the filing. The issuer must provide any additional information requested within 10 business days of the request. If TDI requests additional information but the issuer fails to provide the requested information or establish a plan to provide the information that is acceptable to TDI, TDI will deem the filing withdrawn and notify the issuer of the withdrawal.

Subsections (b) and (c) explain the factors TDI will examine and consider, which include (1) the reasonableness of the assumptions used by the issuer to develop the rates and the validity of the historical data underlying the assumptions; (2) the issuer's data related to past projections and actual experience; (3) the reasonableness of assumptions used by the issuer to estimate the rate impact of the reinsurance and risk adjustment programs; (4) the issuer's data related to implementation and ongoing utilization of certain factors as required by 42 USC Subchapter XXV, Part A, concerning Individual and Group Market Reforms; (5) factors specified in the Insurance Code; (6) factors listed in 45 CFR §154.301(a)(4); and (7) whether the issuer complies with rating standards under §3.503.

Subsection (d) provides that TDI will also consider the factors from Insurance Code §1698.052(c) when reviewing rates for a qualified health plan. Those factors include:

- the purchasing power of consumers who are eligible for a premium subsidy under federal law;

- if the plan is in the silver level, whether the rate is appropriate in relation to the rates charged for qualified health plans offering different levels of coverage, accounting for any funding or lack of funding for CSRs and the covered benefits for each level of coverage; and

- whether the plan issuer used the induced-demand factors developed by the Centers for Medicare and Medicaid Services (CMS) for the level of coverage offered by the plan or any state-specific induced-demand factors established by TDI.

Subsection (e) provides that the standard for determining that a rate increase is unreasonable is whether the rate is excessive, unjustified, or unfairly discriminatory. Subsection (e)(1) explains that a rate filing is excessive if it causes the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage.

Subsection (e)(2) explains that a rate increase is unjustified if the issuer provides incomplete or inadequate information or otherwise does not provide a basis for TDI to determine the reasonableness of the rate increase.

Subsection (e)(3) explains that a rate increase is unfairly discriminatory on the basis of Insurance Code §560.002(c), which provides that a rate is unfairly discriminatory if it is not based on sound actuarial principles; does not bear a reasonable relationship to the expected loss and expense experience among risks; or is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or insured.

Subsection (f) provides that a rate will be deemed compliant at the expiration of 60 days from the date the rate is filed, unless the filing is withdrawn or TDI has determined that the rate is noncompliant or granted an extension. If TDI has not finalized its determination before the 60th day, TDI may extend the period by up to 10 days, with notice to the issuer. The issuer may also extend the time frame for review or waive the right to deem the rate compliant.

Subsection (g) provides that TDI will identify deficiencies for any rate filing that does not comply with the applicable rating standards and ask for corrections. If the issuer fails to make the necessary corrections within 10 business days or establish a plan that is acceptable to TDI to address the identified deficiencies, the filing will be determined to be noncompliant and TDI will notify the issuer of the determination.

Subsection (h) explains that TDI will communicate objections to a rate increase and give the issuer an opportunity to provide additional information or modify the filing prior to TDI determining that the rate increase is unreasonable. Subsection (h) also describes what will happen when TDI determines that a rate increase is unreasonable but that the issuer is legally permitted to implement the rate increase. In this case, TDI will issue a final determination and brief explanation. After receipt of this, the issuer is required to submit a final justification for the rate increase and prominently post information concerning the rate increase on its website, consistent with 45 CFR §154.230, which requires that the issuer keep the posting on its website for at least three years.

Section 3.507. Section 3.507 addresses public disclosure and input related to rate increases, consistent with 45 CFR §154.301(b). Subsection (a) provides that information related to an adopted annual rate increase of 15% or more will be made publicly available on a website published by CMS.

Subsection (b) supplies the TDI email address to which public comments concerning adopted rate increases may be sent.

Subsection (c) states that final rate increases will be publicly available on a website published by CMS no later than the first day of the annual open enrollment period in the individual market for the applicable calendar year.

Subsection (d) provides that TDI will make information related to proposed or final rate filings publicly available in a manner consistent with federal law.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from six commenters on the proposed new sections. Commenters in support of the proposal were AARP, Every Texan, Texas 2036, and the Texas Medical Association. Commenters in support of the proposal with changes were Superior HealthPlan and the Texas Association of Health Plans.

Comments generally.

Comment. Several commenters state that they support the rule as proposed and encourage its adoption. Specifically, the commenters state they support the inclusion of uniform induced-demand factors and the reference to Insurance Code Chapter 1698 in §3.503.

Agency Response. TDI appreciates the support.

Comment on §3.504.

Comment. One commenter notes an error in the list of rating areas. King County should be in rating area 14 (Lubbock) as noted on the CMS website, and not rating area 24 (Wichita Falls).

Agency Response. TDI agrees with the comment and has made the noted correction.

Comments on §3.505.

Comment. A commenter asks whether TDI will be developing its own standards when considering rate increases of 15% or more or using the federal standards.

Agency Response. TDI intends to have similar review of increases as federal standards. Review standards are specified in §3.506. Carriers need to submit a final justification for rate increases more than 15%, as required by §3.506(h).

Comment. One commenter states a preference for a CSR load factor of 1.40 in §3.505(f). The commenter states that this number would align with the expected member migration in which enrollees receiving no CSRs, or minimal CSRs (in the 73% AV plan), would no longer purchase silver plans. Two other commenters expressly support the proposed CSR adjustment factor of 1.35.

Agency Response. TDI disagrees with the first commenter and declines to make the suggested change. The factor of 1.35 as proposed is based on the actual 2021 enrollment distribution across the silver plan variations. TDI believes it is more prudent to base the factor on data currently available rather than on future projections that could change based on a variety of factors. However, TDI plans to monitor the market to determine whether enrollment distribution changes warrant a change to the CSR adjustment factor in future years. If a change becomes necessary, this would occur through an amendment to the rules.

Comment. One commenter suggests a change to the proposed requirements in §3.505(i) that apply to issuers that do not intend to issue a plan in the subsequent calendar year. The proposed requirement includes submission of current year cumulative data on June 15, including data through May 31. The commenter requests that TDI change the current year cumulative data to be through March 31. The commenter states that this would align the provisions with the requirements of the enrollment spreadsheet to include the number of covered lives as of March 31 and provide adequate time for gathering the data.

Agency Response. TDI agrees and has made the change.

Comment on §3.507.

Comment. A commenter requests clarification from TDI on whether the intent is to follow the CMS dates for publication of carrier-proposed rate filings.

Agency Response. CMS will publish carrier-proposed rate filings according to the schedule it determines. TDI will provide a link to the filings published by CMS on its website: tdi.texas.gov/health/ratereview.html.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §§3.501 - 3.507 under Insurance Code §§1698.051, 1698.052, 1701.060, and 36.001.

Insurance Code §1698.051 requires that the Commissioner by rule establish a process under which the Commissioner will review individual and small group health benefit plan rates and rate changes for compliance with Chapter 1698 and other applicable state and federal laws, including 42 USC §§300gg, 300gg-94, and 18032(c) and those sections implementing regulations, including rules establishing geographic rating areas.

Insurance Code §1698.052(b) - (d) authorize the Commissioner to adopt rules and provide guidance regarding requirements related to individual health benefit plan rates.

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

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

§3.504. Geographic Rating Areas.

(a) An issuer may vary rates based on rating area, which is determined:

(1) in the individual market, using the primary policyholder's or contract holder's address; and

(2) in the small group market, using the group policyholder's or contract holder's principal business address.

(b) For the purposes of this subchapter, rating areas for plan or policy years beginning on or after January 1, 2023, are established as follows.

(1) Rating area 1 (Abilene) consists of the following Texas counties:

(A) Brown;

(B) Callahan;

(C) Coleman;

(D) Comanche;

(E) Eastland;

(F) Fisher;

(G) Haskell;

(H) Jones;

(I) Kent;

(J) Mitchell;

(K) Nolan;

(L) Runnels;

(M) Scurry;

(N) Shackelford;

(O) Stephens;

(P) Stonewall;

(Q) Taylor; and

(R) Throckmorton.

(2) Rating area 2 (Amarillo) consists of the following Texas counties:

(A) Armstrong;

(B) Briscoe;

(C) Carson;

(D) Castro;

(E) Childress;

(F) Collingsworth;

(G) Dallam;

(H) Deaf Smith;

(I) Donley;

(J) Gray;

(K) Hall;

(L) Hansford;

(M) Hartley;

(N) Hemphill;

(O) Hutchinson;

(P) Lipscomb;

(Q) Moore;

(R) Ochiltree;

(S) Oldham;

(T) Parmer;

(U) Potter;

(V) Randall;

(W) Roberts;

(X) Sherman;

(Y) Swisher; and

(Z) Wheeler.

(3) Rating area 3 (Austin) consists of the following Texas counties:

(A) Bastrop;

(B) Blanco;

(C) Burnet;

(D) Caldwell;

(E) Fayette;

(F) Hays;

(G) Lee;

(H) Llano;

(I) Travis; and

(J) Williamson.

(4) Rating area 4 (Beaumont) consists of the following Texas counties:

(A) Angelina;

(B) Hardin;

(C) Houston;

(D) Jasper;

(E) Jefferson;

(F) Nacogdoches;

(G) Newton;

(H) Orange;

(I) Polk;

(J) Sabine;

(K) San Augustine;

(L) San Jacinto;

(M) Shelby;

(N) Trinity; and

(O) Tyler.

(5) Rating area 5 (Brownsville) consists of the following Texas counties:

(A) Cameron;

(B) Kenedy; and

(C) Willacy.

(6) Rating area 6 (College Station) consists of the following Texas counties:

(A) Brazos;

(B) Burleson;

(C) Grimes;

(D) Leon;

(E) Madison;

(F) Milam;

(G) Robertson; and

(H) Washington.

(7) Rating area 7 (Corpus Christi) consists of the following Texas counties:

(A) Aransas;

(B) Bee;

(C) Jim Wells;

(D) Kleberg;

(E) Live Oak;

(F) Nueces;

(G) Refugio; and

(H) San Patricio.

(8) Rating area 8 (Dallas) consists of the following Texas counties:

(A) Collin;

(B) Dallas;

(C) Ellis;

(D) Hunt;

(E) Kaufman;

(F) Navarro; and

(G) Rockwall.

(9) Rating area 9 (El Paso) consists of the following Texas counties:

(A) Brewster;

(B) Culberson;

(C) El Paso;

(D) Hudspeth;

(E) Jeff Davis; and

(F) Presidio.

(10) Rating area 10 (Houston) consists of the following Texas counties:

(A) Galveston; and

(B) Harris.

(11) Rating area 11 (Killeen/Temple) consists of the following Texas counties:

(A) Bell;

(B) Coryell;

(C) Hamilton;

(D) Lampasas;

(E) Mills; and

(F) San Saba.

(12) Rating area 12 (Laredo) consists of the following Texas counties:

(A) Duval;

(B) Jim Hogg;

(C) McMullen;

(D) Webb; and

(E) Zapata.

(13) Rating area 13 (Longview) consists of the following Texas counties:

(A) Gregg;

(B) Harrison;

(C) Marion;

(D) Panola;

(E) Rusk; and

(F) Upshur.

(14) Rating area 14 (Lubbock) consists of the following Texas counties:

(A) Bailey;

(B) Cochran;

(C) Crosby;

(D) Dickens;

(E) Floyd;

(F) Garza;

(G) Hale;

(H) Hockley;

(I) King;

(J) Lamb;

(K) Lubbock;

(L) Lynn;

(M) Motley;

(N) Terry; and

(O) Yoakum.

(15) Rating area 15 (McAllen) consists of the following Texas counties:

(A) Brooks;

(B) Hidalgo; and

(C) Starr.

(16) Rating area 16 (Midland/Odessa) consists of the following Texas counties:

(A) Andrews;

(B) Borden;

(C) Crane;

(D) Dawson;

(E) Ector;

(F) Gaines;

(G) Glasscock;

(H) Howard;

(I) Loving;

(J) Martin;

(K) Midland;

(L) Pecos;

(M) Reeves;

(N) Terrell;

(O) Upton;

(P) Ward; and

(Q) Winkler.

(17) Rating area 17 (San Angelo) consists of the following Texas counties:

(A) Coke;

(B) Concho;

(C) Crockett;

(D) Irion;

(E) Kimble;

(F) Mason;

(G) McCulloch;

(H) Menard;

(I) Reagan;

(J) Schleicher;

(K) Sterling;

(L) Sutton; and

(M) Tom Green.

(18) Rating area 18 (San Antonio) consists of the following Texas counties:

(A) Atascosa;

(B) Bandera;

(C) Bexar;

(D) Comal;

(E) Dimmit;

(F) Edwards;

(G) Frio;

(H) Gillespie;

(I) Gonzales;

(J) Guadalupe;

(K) Kendall;

(L) Kerr;

(M) Kinney;

(N) La Salle;

(O) Maverick;

(P) Medina;

(Q) Real;

(R) Uvalde;

(S) Val Verde;

(T) Wilson; and

(U) Zavala.

(19) Rating area 19 (Sherman/Dennison) consists of the following Texas counties:

(A) Cooke;

(B) Fannin; and

(C) Grayson.

(20) Rating area 20 (Texarkana) consists of the following Texas counties:

(A) Bowie;

(B) Camp;

(C) Cass;

(D) Delta;

(E) Franklin;

(F) Hopkins;

(G) Lamar;

(H) Morris;

(I) Red River; and

(J) Titus.

(21) Rating area 21 (Tyler) consists of the following Texas counties:

(A) Anderson;

(B) Cherokee;

(C) Henderson;

(D) Rains;

(E) Smith;

(F) Van Zandt; and

(G) Wood.

(22) Rating area 22 (Victoria) consists of the following Texas counties:

(A) Calhoun;

(B) DeWitt;

(C) Goliad;

(D) Jackson;

(E) Karnes;

(F) Lavaca; and

(G) Victoria.

(23) Rating area 23 (Waco) consists of the following Texas counties:

(A) Bosque;

(B) Falls;

(C) Freestone;

(D) Hill;

(E) Limestone; and

(F) McLennan.

(24) Rating area 24 (Wichita Falls) consists of the following Texas counties:

(A) Archer;

(B) Baylor;

(C) Clay;

(D) Cottle;

(E) Foard;

(F) Hardeman;

(G) Jack;

(H) Knox;

(I) Montague;

(J) Wichita;

(K) Wilbarger; and

(L) Young.

(25) Rating area 25 (Fort Worth) consists of the following Texas counties:

(A) Denton;

(B) Erath;

(C) Hood;

(D) Johnson;

(E) Palo Pinto;

(F) Parker;

(G) Somervell;

(H) Tarrant; and

(I) Wise.

(26) Rating area 26 (Houston SW) consists of the following Texas counties:

(A) Austin;

(B) Brazoria;

(C) Colorado;

(D) Fort Bend;

(E) Matagorda;

(F) Waller; and

(G) Wharton.

(27) Rating area 27 (Houston NE) consists of the following Texas counties:

(A) Chambers;

(B) Liberty;

(C) Montgomery; and

(D) Walker.

§3.505. Required Rate Filings.

(a) An issuer may not use a rate with respect to a plan if:

(1) the issuer has not filed the rate with TDI for review;

(2) the rate filing does not comply with the standards in §3.503 of this title (relating to Rating Standards); or

(3) the rate filing has been withdrawn.

(b) Each issuer must submit an annual rate filing no later than June 15 for any individual or small group market plan that will be issued effective on or after January 1 in the following calendar year. A small group issuer may include scheduled quarterly trend increases within the annual rate filing. An issuer may have only one active annual single risk pool rate filing in each market. An issuer may not modify an annual rate filing later than October 1 prior to the calendar year for which the filing was submitted.

(c) A small group issuer may submit a rate filing for a quarterly rate change that takes effect on April 1, July 1, or October 1. A small group issuer may have only one active quarterly single risk pool rate filing at a given time. Notwithstanding §26.11 of this title (relating to Restrictions Relating to Premium Rates), a small group issuer must submit a quarterly rate filing at least 105 days before the effective date of the rate change.

(d) A rate filing must include the index rate for the single risk pool and reflect every product and plan that is part of the single risk pool in the applicable market. Issuers are not required to enter CSR plan variations separately.

(e) Rate filings made under this subchapter must be submitted through the electronic system designated by TDI, according to any technical instructions provided for the electronic system and consistent with the rules and procedures in Chapter 3, Subchapter A, of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) and §11.301 of this title (relating to Filing Requirements).

(f) Rate filings made under this subchapter must include the following:

(1) the URRT (Part I);

(2) for a rate increase that is 15% or more within a 12-month period that begins on January 1, as determined by 45 CFR §154.200(b) and (c), concerning Rate Increases Subject to Review, a written description justifying the rate increase (Part II) that complies with 45 CFR §154.215(e), concerning Submission of Rate Filing Justification;

(3) rating filing documentation (Part III) that complies with 45 CFR §154.215(f) and that includes an unredacted actuarial memorandum signed by a qualified actuary;

(4) a rates table that identifies the applicable rate for each plan, depending on an individual's rating area, tobacco use, and age;

(5) an enrollment spreadsheet that contains, with respect to each county:

(A) the number of covered lives, as of March 31 of the current year, that are enrolled in each of the following plan types, separated on the basis of whether the enrollment is through the federal exchange or off-exchange:

(i) catastrophic plans;

(ii) bronze plans;

(iii) silver plans, separated as follows:

(I) silver plans with an AV of 70%;

(II) silver plans with an AV of 73%;

(III) silver plans with an AV of 87%;

(IV) silver plans with an AV of 94%; and

(V) silver plans with an AV of 100%;

(iv) gold plans; and

(v) platinum plans;

(B) whether the plan is available in the county in the current calendar year; and

(C) whether the plan will be available in the county in the next calendar year; and

(6) an AV and cost-sharing factor spreadsheet that contains:

(A) the plan ID specified in the URRT; and

(B) the component factors of an AV and cost-sharing design of plan field in the URRT, which should not include adjustments that account for the morbidity of the population expected to enroll in the plan, including:

(i) the AV of the plan, calculated consistent with 45 CFR §156.135, concerning AV Calculation for Determining Level of Coverage;

(ii) the induced-demand factor of 1.00 for bronze plans, 1.03 for silver plans, 1.08 for gold plans, and 1.15 for platinum plans; and

(iii) for individual silver plans on the exchange, a CSR adjustment factor of 1.35, that accounts for the average costs attributable to CSRs, to the extent that issuers are not otherwise being reimbursed for those costs. If issuers are being reimbursed for those costs by HHS, consistent with 42 USC §18071, concerning Reduced Cost-Sharing for Individuals Enrolling in Qualified Health Plans, then the CSR adjustment factor would not apply.

(g) Issuers may submit data using the templates available on TDI's website at www.tdi.texas.gov/health/ratereview.html.

(h) On request from TDI, an issuer must provide any additional information needed to evaluate the rate filing.

(i) An issuer that does not intend to issue a plan that would require a rate filing for the next calendar year, but that has enrollment in a plan that is subject to this subchapter in the current year or the prior year, must submit the data for such plan under paragraphs (1) and (2) of this subsection, as applicable, to TDI no later than June 15. For example, in June of 2022, an issuer must submit data under paragraph (1) of this subsection for the 2021 calendar year, and data under paragraph (2) of this subsection for the first five months of calendar year 2022. An issuer that does not have data to submit under paragraph (2) of this subsection is still required to submit data under paragraph (1) of this subsection.

(1) For prior year cumulative data, an issuer must submit:

(A) allowed claim costs, defined as total payments made under the plan to health care providers on behalf of covered members and including payments made by the issuer, member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and net payments from any federal or state reinsurance arrangement or program;

(B) incurred claim costs, defined as allowed claim costs as specified in subparagraph (A) of this paragraph, less member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and any net payments from a federal or state reinsurance arrangement;

(C) earned premium; and

(D) member months.

(2) For current year cumulative data through March 31, an issuer must submit:

(A) earned premium;

(B) member months; and

(C) the enrollment spreadsheet required under subsection (f)(5) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
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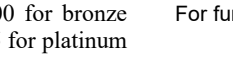

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER TT. ALL-PAYOR CLAIMS DATABASE

28 TAC §§21.5401 - 21.5406

The Commissioner of Insurance adopts new 28 TAC §§21.5401 - 21.5406, concerning the all-payor claims database.

The Commissioner adopts §21.5406 without changes and §§21.5401 - 21.5405 with changes to the proposed text published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1861). Sections 21.5401 - 21.5405 will be republished. The adoption implements House Bill 2090, 87th Legislature, 2021.

REASONED JUSTIFICATION. Insurance Code Chapter 38, Subchapter I, requires establishment of an all-payor claims database to increase public transparency of health care information and improve the quality of health care in this state. Insurance Code §38.403 provides that the Commissioner is to adopt rules establishing fixed terms for members of a stakeholder advisory group. Insurance Code §38.404 requires the Texas Department of Insurance (the department) to collaborate with the Center for Health Care Data at The University of Texas Health Science Center at Houston (the Center) to aid in the establishment of the database. Insurance Code §38.409 requires the Commissioner, in consultation with the Center, to adopt rules that specify the types of data a payor is required to provide; detail the schedule, frequency, and manner of data submission; and establish oversight and enforcement mechanisms.

Section 21.5401. New §21.5401 identifies the types of health plans that are subject to the requirements to produce all-payor claims data files. As proposed, the list of plans subject to these requirements includes county employee health benefit plans established under Local Government Code Chapter 157 and group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172. The department invited comments on whether these plans qualify as a "payor" under Texas Insurance Code §38.402(7) and can be subject to the requirements of this rulemaking. The department received one comment on this subject that was in support of including these types of plans within the scope of the rules. New §21.5401 also specifies that the data required by new Subchapter TT is limited to Texas resident members.

In response to other comments, §21.5401(b)(9) is changed to permit, but not require, payors to submit data with respect to Medicare Supplement plans.

Section 21.5402. New §21.5402 provides definitions of terms used throughout the new rules, including various types of data files. The department changes "The Center for Healthcare Data" to "The Center for Health Care Data" in paragraph (2) of this section.

Section 21.5403. New §21.5403 describes the database's common data layout (CDL) and permits the Center to provide flexibility for payors submitting data by issuing a submission guide or other technical guidance for existing requirements. It also specifies that any inconsistencies in the Center's submission guide and these rules will be controlled by the text of the rules. The Texas All-Payor Claims Database (APCD) CDL is modified in response to comments. As a result, the version number and date of the Texas APCD CDL is updated. Changes made to the Texas APCD CDL include:

- Threshold values are removed for several data fields where they are inapplicable because the fields are required only if available.

- The Unassigned field is clarified to indicate that it is not a required field.

- The Employment Status field is changed to be required only if available, and the threshold is removed in response to a comment.

- The description of the Allowed Amount field is modified to clarify the instruction for capitated claims in response to a comment.

- Threshold values are clarified for certain data fields in the medical claims data file that previously indicated, "Not required if Provider ID can be linked to provider file." The threshold values now match the values for the corresponding fields in the provider data file.

- Threshold values are clarified for certain data fields in the medical and pharmacy claims data files that previously indicated, "May be left blank if Member ID links to eligibility file." The threshold values now match the values for the corresponding fields in the eligibility data file.

- Data fields are added to the dental claims file. The data fields are consistent with the All-Payer Claims Database Common Data Layout established by the National Association of Health Data Organizations. Added data fields are either optional or required only if available.

Section 21.5404. New §21.5404 provides technical requirements concerning the formatting, encryption, and transmission of data. It instructs payors or their designees to register with the Center to obtain their credentials and unique member identification (ID) numbers to be used with the submission and naming of data. It also prohibits the submission of duplicate data submitted by a third party. In response to comments, subsection (a) is modified to permit, rather than require, certain payors to ask sponsors of health benefit plans referenced in Insurance Code §38.407 whether they will voluntarily submit plan data. In response to comments, the adopted rule clarifies that the Texas Health and Human Services Commission may submit data on behalf of all payors participating in applicable plans and programs overseen by the Commission. Also in response to comments, the adopted rule now permits, but does not require, payors to submit data with respect to Medicare Supplement plans.

Section 21.5404 also lists the data files that must be submitted consistent with the requirements of the APCD CDL, including standardized values and code sources. It requires files to include information that enables the data to be separated on the basis of the types of plans. It clarifies certain requirements for claims data files, including specifying that all claims data must be submitted for a given reporting period based on the claim adjudication date. In response to comments, the adopted rule permits files to be submitted within multiple zip files, and clarifies the types of denied claims that must be reported.

This new section also sets forth requirements related to reporting members' social security numbers or unique member IDs, requires enrollment and eligibility data to be reported at the individual member level, and requires header and trailer records for file submissions. In response to comments, the adopted rule relaxes requirements about when a unique member ID may change.

The department also changes "USB disk" to "USB drive" in paragraph (d)(1) and "transmit the filing" to "transmit the files" in paragraph (d)(4) of this section.

Section 21.5405. New §21.5405 describes the timing and frequency of the required data submissions. It also directs payors to submit test data, historical data, and monthly data on the basis of notice provided by the Center. As proposed, the initial date for submission of monthly data would be no sooner than January 1, 2023. In response to comments, that date is changed to March 1, 2023, and additional time is provided for the submission of test and historical data files. This new section also provides an extension for certain small payors; allows other payors an opportunity to request an extension or a temporary exception from some requirements related to the submission of data; and outlines the Center's role in assessing, receiving, requesting corrections to, and rejecting data. In response to comments, the adopted rule adds a requirement that the Center communicate receipt of data and respond to a request for an extension or temporary exception within 14 calendar days.

Section 21.5406. New §21.5406 prescribes the fixed terms to be served by members of the stakeholder advisory group, as directed by statute. It provides dates for the initial terms of the stakeholder advisory group as well as the staggered terms. This new section outlines the obligations of members with respect to required disclosures, conflicts of interest, standards of conduct, and removal for good cause.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received comments from five commenters on the proposed rule. Commenters in support of the proposal with changes were America's Health Insurance Plans, the Center for Health Care Data at The University of Texas Health Science Center at Houston, Texas Association of Health Plans, Texas Association of Life & Health Insurers, and USAA Life Insurance Company.

Comments on the proposed rule generally.

Comment. A commenter requests careful consideration of appropriately funding any data collection program to maintain it and avoid collection of low-quality data after it is developed. The commenter asserts that submitting data quarterly can be challenging and costly.

Agency Response. The department appreciates the input but is unable to address funding in the rules. HB 2090 does not provide a mechanism to fund the database through the adoption of rules. Further, the proposed rules provide for monthly submission of data, not quarterly as the commenter asserts.

Comment. A commenter requests that the rule clarify that payors are not required to submit any data on performance-based contracting arrangements. The commenter asserts that the APCD is a claims database, "so requiring data on items that are not claims related, such as drug rebates or performance-based provider contract data... should be expressly prohibited by the rules."

Agency Response. The department agrees that the focus of the rule is on claims but declines to make changes to the rule because the department does not believe adding clarifying language is necessary. The rule text and the common data layout reflect the nature of the claims that are to be submitted to the APCD.

Comments on §21.5401.

Comment. Four commenters request striking Medicare Supplement plans from the list of plans subject to the rules, and two commenters request an explicit exclusion of Medicare Supplement plans from the rules. Two of the four commenters assert that the Legislature did not intend to include Medicare or supplemental plans within the scope of HB 2090, while one commenter asserts that the Legislature did not intend HB 2090 to apply to a policy where Medicare is the primary payor.

One commenter asserts that smaller carriers will be burdened by the reporting and the additional cost will increase rates and discourage new carriers offering Medicare Supplement plans from entering the market. Two commenters assert that inclusion of Medicare Supplement plan data does not enhance transparency, while another commenter asserts that claims data from Medicare plans could not be reasonably comparable to claims under a major medical health benefit plan.

Three of the four commenters assert that because federal law dictates provider charges and benefits of Medicare Supplement plans, the value of that data is limited. Three commenters assert that because Medicare Supplement plans are fixed indemnity products, they have no relation to the cost of services rendered, and the inclusion of this data would skew reporting. Two commenters assert that the data is not useful and will require extensive resources to produce.

On the other hand, one commenter asserts that Medicare Supplement plan data is valuable and, for example, could provide insight into the affordability of medical care and how access to medical care differs between seniors who have traditional Medicare alone and those with both Medicare and a Medicare Supplement plan. The commenter encourages inclusion of Medicare Supplement plan data and asserts that both federal and state law define Medicare Supplement plans as a type of benefit plan or health benefit plan, and that HB 2090 was not intended to exclude Medicare Supplement plans.

Agency Response. The department disagrees with the assertion that HB 2090's reporting requirements do not extend to payors providing Medicare Supplement benefit plans. Insurance Code §38.402(7)(A) defines "payor" broadly, including in the definition, "an insurance company providing health or dental insurance" that pays, reimburses, or otherwise contracts "with a health care provider for the provision of health care services, supplies, or devices to a patient. . . ." Insurance Code §1652.002 defines a Medicare supplement benefit plan as a "policy of accident and health insurance." And insurance companies providing Medicare Supplement benefit plans either pay, reimburse, or otherwise contract with providers. In addition, Insurance Code §38.404(c)(4)(A) requires certain information to be collected and submitted to the database, including whether health services, supplies, or devices were provided to an individual through a Medicaid *or Medicare program.*

Still, the department understands the commenters' concerns regarding costs to produce this data. As a result, and in the interest of maximizing cost effectiveness, particularly in the early phases of the database's implementation, the department makes reporting Medicare Supplement plan data voluntary by revising §21.5401(b)(9) and §21.5404(a). If the cost-benefit analysis for this data changes, the department may consider future amendments to the rules to require reporting of certain Medicare Supplement plan data.

Comment. A commenter supports the applicability of the rule to group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172, concerning Texas Political Subdivisions Uniform Group Benefits Program, contained in §21.5401(b)(16). The commenter suggests keeping the direct reference to Chapter 172 entities to ensure the inclusion of their data.

Agency Response. The department agrees and believes retaining the language accomplishes the goal of the statute.

Comment. Three commenters request striking Medicare Advantage Plans from the list of plans subject to the rules. Two of the three commenters assert that the Legislature did not intend to include Medicare or supplemental plans within the scope of HB 2090, while one commenter asserts that the Legislature did not intend HB 2090 to apply to a policy where Medicare is the primary payor. The third commenter asserts that claims data from Medicare plans could not be reasonably comparable to claims under a major medical health benefit plan. Three commenters assert that because federal law dictates provider charges and benefits of Medicare Advantage Plans, the value of that data is limited. Two commenters assert that the data is not useful and will require extensive resources to produce. One commenter asserts that federal law precludes the department from requiring the submission of data, and another commenter expresses support for this assertion.

On the other hand, a fourth commenter indicates that a majority of other states' APCDs require Medicare Advantage Plan data while noting that, to the commenter's knowledge, there has been no litigation challenging the submission of claims from Medicare Advantage Plans. The commenter also asserts that the Legislature is aware of the principles of statutory construction and chose to exclude only "fully self-funded ERISA plans." The commenter says that if the Legislature had wanted to exclude a particular plan type from having to submit data to the APCD, it would have done so.

Agency Response. The department disagrees with the assertion that HB 2090's reporting requirements do not extend to payors providing Medicare Advantage Plans and that federal law precludes the state from requiring payors to submit data related to Medicare Advantage Plans. The department also believes Medicare Advantage Plan data is valuable. Thus, the department declines to make a change.

An entity defined as a "payor" by HB 2090 is required to submit claims data in accordance with that law. In Insurance Code §38.402(7), the Legislature defines "payor" broadly, including in the definition "an insurance company providing health... insurance" or "a health maintenance organization" that pays, reimburses, or otherwise contracts "with a health care provider for the provision of health care services, supplies, or devices to a patient. . . ." An entity providing a Medicare Advantage Plan

meets that definition and thus is required to submit claims data as required by HB 2090 and these rules.

The department also does not believe that federal law precludes the mandatory submission of data for Medicare Advantage Plans. Standards established under 42 CFR part 422 generally govern Medicare Advantage Plans, and those standards supersede conflicting state laws and regulations. *See* 42 CFR §422.402 (Federal Preemption of State Law). But the proposed rules do not impact or change Medicare Advantage Plans' eligibility, enrollment, benefits, the payment of claims, or any other area governed by the federal standards in part 422. Also, under 42 USC §1395w-25, an organization providing Medicare Advantage Plans must be "organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage. . . ." Medicare Advantage Plans provide hospital and medical coverage similar to other major medical plans that are subject to reporting, and pay, reimburse, or otherwise contract with providers. The department also finds it noteworthy that other states' APCDs collect Medicare Advantage Plan data, and to date no parties have brought legal challenges against those states based on federal preemption arguments.

The department also believes that the collection of Medicare Advantage plan data is valuable, and the absence of such data would prevent the database from meeting the goals of the statute. The database aims to collect information on health care utilization, access, outcomes, and quality across the Texas population--not just information on covered benefits and costs, and not just information on the commercial health insurance market.

Comment. Three commenters request striking Medicare Part D prescription drug benefit plans from the list of plans subject to the rules. Two commenters assert that the Legislature did not intend to include Medicare or supplemental plans within the scope of HB 2090, while one commenter asserts the Legislature did not intend to apply HB 2090 to a policy where Medicare is the primary payor. One commenter asserts that claims data from Medicare plans could not be reasonably comparable to claims under a major medical health benefit plan. Three commenters assert that because federal law dictates provider charges and benefits of Part D plans, the value of that data is limited. Two commenters assert that the data is not useful and will require extensive resources to produce. One commenter asserts that federal law precludes the department from requiring the submission of data. Another commenter expresses support for this federal preemption comment.

Agency Response. The department disagrees that HB 2090's reporting requirements do not extend to payors providing Medicare Part D prescription drug benefit plans and that federal law precludes the state from requiring payors to submit data related to Medicare Part D prescription drug benefit plans. The department also believes Medicare Part D prescription drug benefit plan data is valuable. Thus, the department declines to make a change.

An entity defined as a "payor" by HB 2090 is required to submit claims data in accordance with that law. In Insurance Code §38.402(7), the Legislature defines "payor" broadly, including in the definition, "an insurance company providing health... insurance" or "a health maintenance organization" that pays, reimburses, or otherwise contracts "with a health care provider for the provision of health care services, supplies, or devices to a patient. . . ." An entity providing a Medicare Part D prescription drug plan meets that definition and thus is required to submit claims data as required by HB 2090 and these rules.

The department also does not believe that federal law precludes the mandatory submission of data for Medicare Part D plans. Standards established under 42 CFR part 423 generally govern Medicare Part D plans, and those standards supersede conflicting state laws and regulations. *See* 42 CFR §423.440(a) (Federal Preemption of State Law). But the proposed rules do not impact or change Medicare Part D plans' eligibility, enrollment, benefits, the payment of claims, or any other area governed by the standards in part 423. Also, under 42 USC §1395w-112, a sponsor of a Medicare Part D prescription drug plan must be "organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage. . . ."

The department also believes that the collection of Medicare Part D plan data is valuable, and the absence of such data would prevent the database from meeting the goals of the statute. Medicare Part D plans provide prescription drug coverage similar to other major medical plans that are subject to reporting. The database aims to collect information on health care utilization, access, outcomes, and quality across the Texas population--not just information on covered benefits and costs, and not just information on the commercial health insurance market.

Comment. A commenter requests changing the "or" to "and" in §21.5401(b)(23).

Agency Response. The department declines to make changes to the proposed rule in response to the comment. The language contained in §21.5401(b)(23) is consistent with the definition of "payor" in Insurance Code §38.402(7)(B).

Comment. Two commenters thank the department for specifying in §21.5401(c) that the rules apply only to the reporting of claims for applicable policies issued to Texas resident members.

Agency Response. The department thanks the commenters for the support and agrees that this clarification accomplishes the goal of the statute.

Comments on §21.5403.

Comment. A commenter objects to the requirement in §21.5403(a) for payors to comply with a particular version of the Texas APCD CDL. The commenter asks the department to remove the specificity and allow the Center to select the version of the CDL with stakeholder input, asserting that "it is important for Texas to have the flexibility to change the version type without having to go through the entire rulemaking process."

Another commenter suggests limiting changes to the data submission guide and other sub-regulatory guidance to no more than once per year. The commenter also suggests making significant updates through statutory changes instead of rulemaking.

Agency Response. The department declines to make a change in response to either commenter. The department believes the level of specificity included in the Texas APCD CDL as adopted is currently appropriate, and that it was the Legislature's intent that any changes to it should be made through the rulemaking process under the Administrative Procedure Act to allow the public an opportunity to participate. *See* Tex. Ins. Code §38.409(a). The Legislature delegated the responsibility to determine APCD data submission requirements to the department and the Center. *See id.* §38.404 and §38.409. Further, the adoption of the

Texas APCD CDL by rule allows for more flexibility than relying only on statutory changes by the Legislature.

Comment. A commenter objects to the following required fields contained in the APCD CDL described in §21.5403:

- Employment Status (CDLME059)

- Payor Claim Control Number (CLDMC005, CDLPC005) and Claim Version Number

(CDLM007, CDLPC007, CDLDC007)

- Sequence Number (CDLME015)

- Other Coverage Under This Plan (CDLME036, CDLME0387, CDLME039)

Agency Response. With respect to the Employment Status field, the department recognizes that the field is not relevant to dependents; however, the employment status of the subscriber provides important information. The Texas APCD CDL is modified to make this field required only if available and remove the threshold.

With respect to the Payor Claim Control Number fields and Claim Version Number fields, the department understands that some payors may have claims systems limitations that prevent the claims reported from fully meeting the requirements of the Texas APCD CDL. Nevertheless, the department believes that data files should contain a Payor Claim Control Number (PCCN) that applies to the entire claim and is unique within a payor's system. The PCCN should be consistent across claim versions and not used as a transaction number. A combination of the PCCN and version number (CDLMC007) will be used to determine which rows will carry forward into the final claim. If possible, it is also imperative that a reversal uses the same PCCN as the original paid claim. Payors that are unable to provide PCCNs that fully meet the requirements of the Texas APCD CDL should request a temporary exception as provided by §21.5405(d).

With respect to the Sequence Number field, the department understands that the sequence number representing the subscriber and dependents may change over time. The submission guide is modified to acknowledge this.

With respect to the Other Coverage Under This Plan field, the department makes no change in response to the comment. To clarify what information is sought, the three codes referenced are defined as indicators requiring "yes" or "no" as a response as to whether medical coverage, pharmacy coverage, or dental coverage is provided as part of the plan. The responses are expected to be from the perspective of the plan submitting the data. These fields do not seek information concerning other coverage provided by other payors.

Comments on §21.5404.

Comment. A commenter recommends that the rules clarify in §21.5404(a) that the Texas Health and Human Services Commission (HHSC) may submit data to the APCD for CHIP, the STAR+PLUS Medicare-Medicaid Pilot program, and Medicaid managed care plans on behalf of all applicable payors.

Agency Response. The department agrees that submitting HHSC data for applicable payors who participate in these various plans or programs is appropriate and changes the relevant proposed language in §21.5404(a) from "may submit data on Medicaid managed care plans on behalf of all applicable payors" to "may submit data on behalf of all applicable payors participating in a plan or program identified in §21.5401(b)(17) - (b)(20) of this title (relating to Applicability)."

Comment. Two commenters object to the written election in §21.5404(a) with respect to plans for which reporting is optional per Insurance Code §38.407. One commenter asserts that "the written opt-out election and response requirements" are in violation of federal law and U.S. Supreme Court decisions and would be subject to preemption, and the commenter urges the department to remove them. The second commenter asserts that the mandatory ask is in violation of state law by depriving the administrator of the ability to decide whether to submit data and suggests replacing "must ask the plan sponsor" with "may ask the plan sponsor."

A third commenter is grateful for the rules' inclusion of informing voluntary data reporters in §21.5404 but is understanding that this component may eventually be deleted.

Agency Response. The department disagrees with the first commenter's characterization of the proposed language as an "opt-out election" and notes that the statute provides otherwise-exempt payors the ability to opt in to submitting data to the APCD. The proposed language permitted, but did not require, a payor to submit data on behalf of a plan that is exempt from state regulation under ERISA. However, the department agrees that the language proposed by the second commenter is appropriate and adopts this revised language.

Comment. A commenter requests clarification that a payor may submit multiple zip files for its large data files instead of a single zip file as proposed in §21.5404(d).

Agency Response. The department agrees and changes the proposed language to accommodate this request.

Comment. A commenter objects to the inclusion of capitated claims data in §21.5404(h). The commenter asserts that "many claims processing systems are unable to provide useful data for claims subject to a capitation payment arrangement" and do not provide a "fee-for-service equivalent" for these capitated claims to be submitted with APCD data. The commenter requests the department to clarify that capitated claims are required only when estimates are available.

Agency Response. The department understands that reporting for claims subject to a capitation payment arrangement will look different from claims paid under a fee-for-service arrangement. Under the Texas APCD CDL, claims that are paid under capitation are identified under the Payment Arrangement Type fields. Within the Plan Paid Amount fields, the amount may be set to "0" for capitated claims. Under the Allowed Amount fields, the payor may also report "0." The description in the Texas APCD CDL is modified to remove the statement instructing payors to report the maximum amount contractually allowed.

Comment. Three commenters address the inclusion of denied claims as a data element described in §21.5404(i)(3), stating that collecting and submitting such data is burdensome, of low value, incomplete, or inaccurate. One of these commenters asserts that the requirement is not consistent with "the plain meaning of the intent of the reporting data base... to report paid claims" and says it should be deleted. Another commenter also says submission of data on denied claims should not be required, but suggests using Claim Adjustment Reason Codes (CARCs) to clarify which types of "administrative denials" are to be included in the data reporting if any data is required for denied claims, and the commenter lists four CARCs that should be excluded.

One commenter asserts that "*some* denied claim information" contains valuable information worthy of inclusion in a payor's submission of data to the APCD. The commenter points out that the submission guide anticipates the exclusion of some fully denied claims, such as for a duplicate claim, but also that claims denied because the service or procedure is an uncovered benefit would be useful information for researchers.

Agency Response. The department understands the commenters' concerns and adopts changes to alleviate them. Section 21.2405(i)(3) is modified to clarify that denied claims are not required when the reason for the denial was incomplete claim coding or duplicative claims. However, denied claims are required when they provide information that supports the objectives of the statute. For example, when a denied claim accurately reflects care that was provided, but that was not covered by a plan due to contractual terms, such as benefit maximums, place of service, provider type, or care deemed not medically necessary or experimental or investigational. The submission guide is modified to identify the particular CARCs that must be submitted to the APCD. A claim or claim line may be omitted if it is denied using a CARC that has not been identified as required within the submission guide.

Comment. A commenter objects to the provision in §21.5404(l) requiring a payor to use the same unique qualifier for the member's entire period of coverage, even if the member's name, plan type, or other enrollment information changes, when the payor does not have that member's social security number. The commenter says this is not feasible because of the variety of changes that might apply to a member, including name changes or movement between employers and plans. The commenter recommends that the rules require payors to use a unique member ID for a member's entire period of coverage under a particular plan.

Agency Response. The department agrees and makes the change requested to clarify that the requirement for a payor to provide documentation linking member IDs when the unique member ID changes is required only when such documentation is available.

Comments on §21.5405.

Comment. A commenter suggests that the first monthly data collection described in §21.5405 not be due until June 1, 2023, to provide "more flexibility to ensure that this process is done correctly." Another commenter says the timeline is aggressive and suggests using the standard submission schedule of other states but does not explain what the standard schedule entails.

Agency Response. The department does not agree it is necessary to delay data reporting an additional 150 days. However, the department understands concerns regarding payors having sufficient time to submit the claims data required by the rule and adjusts the dates of the data collection as follows:

- the Center will provide notice of the timeline to submit registration and test data no later than 90 days before the data is due, and test data will be due no sooner than October 1, 2022;

- the Center will provide notice of the timeline for submitting historical data from January 1, 2019, to the most recent reporting period no later than 120 days before the data is due, and the historical data will be due no sooner than January 1, 2023; and

- the Center will provide notice of the timeline for submitting monthly data no later than 180 days before the commencement of the monthly data submission, and the initial monthly data submission will be due no sooner than March 1, 2023.

Comment. A commenter emphasizes the importance of obtaining historical data, as described in §21.5405(b)(2), to create a baseline of pre-COVID information. Another commenter notes that data older than three years may require additional work to access from payors' systems.

Agency Response. The department agrees that January 1, 2019, is appropriate and makes no changes to the language. In recognition of the time that will be needed for issuers to assemble the historical data reports, the department extends the timeline for submitting historical data, so that it will be required no sooner than January 1, 2023.

Comment. A commenter states appreciation for the submission extension for smaller carriers under §21.5405(c), but requests and recommends an exemption for smaller benefit plans from the rules instead. The commenter asserts that "requiring plans with less than 1,000 covered residents to submit data would be extremely burdensome and provide very little useful data." The commenter asserts that with such a small sample size, "the likelihood of them begin able to meet the CDL reporting thresholds drops significantly." A different commenter asserts that the exemption and modified timeline for small carrier submission in the proposed rules are workable solutions.

Agency Response. The department declines to make the first commenter's change. Reporting is required at the payor level, not at the plan level. HB 2090 does not exempt smaller plans from its data submission requirements. Further, the department believes the data submission deadline extension in §21.5405(c) provides an adequate accommodation for small issuers.

Comment. A commenter requests the rules establish a presumption for the granting of a temporary exception or extension when requested by a payor under §21.5405(d) or (e), respectively.

Agency Response. The department understands the commenter's concerns and changes the language in proposed §21.5405(d) and (e) to address those concerns and provide details concerning when a request is deemed accepted or withdrawn and to provide a 14-day timeline for the Center to respond or request additional information.

Comment. A commenter recommends the rules require the Center to respond within 14 calendar days notifying a payor of acceptance, rejection, or other issues to allow the payor to correct any system issues going forward rather than having to spend limited resources recreating old submissions.

Agency Response. The department agrees and changes the language in proposed §21.5405(g) to provide a 14-day timeline for the Center to inform the payor of the data quality assessments and specify any required data corrections and resubmissions.

Comment on §21.5406.

Comment. A commenter expresses appreciation for the inclusion of health insurance providers in the stakeholder advisory group established in §21.5406.

Agency Response. The department thanks the commenter and believes this accomplishes the goal of the statute.

STATUTORY AUTHORITY. The Commissioner adopts new §§21.5401 - 21.5406 under Insurance Code §§38.403, 38.404, 38.409, and 36.001.

Insurance Code §38.403 provides that members of the stakeholder advisory group serve fixed terms as prescribed by rules adopted by the Commissioner.

Insurance Code §38.404 provides that payors must submit the required data at a schedule and frequency determined by the Center and adopted by the Commissioner by rule.

Insurance Code §38.409 provides that the Commissioner adopt rules specifying the types of data a payor is required to provide to the Center and also specifying the schedule, frequency, and manner in which a payor must provide data to the Center.

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.

§21.5401. Applicability.

(a) This subchapter applies to a payor that issues, sponsors, or administers a plan subject to reporting under subsection (b) of this section.

(b) Payors must submit data files as required by this subchapter with respect to each of the following types of health benefit plans or dental benefit plans issued in Texas:

(1) a health benefit plan as defined by Insurance Code §1501.002, concerning Definitions;

(2) an individual health care plan that is subject to Insurance Code §1271.004, concerning Individual Health Care Plan;

(3) an individual health insurance policy providing major medical expense coverage that is subject to Insurance Code Chapter 1201, concerning Accident and Health Insurance;

(4) a health benefit plan as defined by §21.2702 of this title (relating to Definitions);

(5) a student health plan that provides major medical coverage, consistent with the definition of student health insurance coverage in 45 CFR §147.145, concerning Student Health Insurance Coverage;

(6) short-term limited-duration insurance as defined by Insurance Code §1509.001, concerning Definition;

(7) individual or group dental insurance coverage that is subject to Insurance Code Chapter 1201 or Insurance Code Chapter 1251, concerning Group and Blanket Health Insurance;

(8) dental coverage provided through a single service HMO that is subject to Chapter 11, Subchapter W, of this title (relating to Single Service HMOs);

(9) a Medicare supplement benefit plan under Insurance Code Chapter 1652, concerning Medicare Supplement Benefit Plans, if the payor elects to submit such data;

(10) a health benefit plan as defined by Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements;

(11) basic coverage under Insurance Code Chapter 1551, concerning Texas Employees Group Benefits Act;

(12) a basic plan under Insurance Code Chapter 1575, concerning Texas Public School Employees Group Benefits Program;

(13) a health coverage plan under Insurance Code Chapter 1579, concerning Texas School Employees Uniform Group Health Coverage;

(14) basic coverage under Insurance Code Chapter 1601, concerning Uniform Insurance Benefits Act for Employees of the University of Texas System and the Texas A&M University System;

(15) a county employee health benefit plan established under Local Government Code Chapter 157, concerning Assistance, Benefits, and Working Conditions of County Officers and Employees;

(16) group dental, health and accident, or medical expense coverage provided by a risk pool created under Local Government Code Chapter 172, concerning Texas Political Subdivisions Uniform Group Benefits Program;

(17) the state Medicaid program operated under Human Resources Code Chapter 32, concerning Medical Assistance Program;

(18) a Medicaid managed care plan operated under Government Code Chapter 533, concerning Medicaid Managed Care Program;

(19) the child health plan program operated under Health and Safety Code Chapter 62;

(20) the health benefits plan for children operated under Health and Safety Code Chapter 63;

(21) a Medicare Advantage Plan providing health benefits under Medicare Part C as defined in 42 USC §1395w-21, *et seq*.;

(22) a Medicare Part D voluntary prescription drug benefit plan providing benefits as defined in 42 USC §1395w-101, *et seq*.; and

(23) a health benefit plan or dental plan subject to the Employee Retirement Income Security Act of 1974 (29 USC §1001 *et seq*.) if the plan sponsor or administrator elects to submit such data.

(c) Data files required by this subchapter must include information with respect to all Texas resident members, as defined in §21.5402(16) of this title. Information on persons who are not Texas resident members is not required.

§21.5402. Definitions.

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

(1) Allowed amount--Has the meaning assigned by Insurance Code §38.402, concerning Definitions.

(2) Center--The Center for Health Care Data at The University of Texas Health Science Center at Houston.

(3) Data--Has the meaning assigned by Insurance Code §38.402.

(4) Data files--Files submitted under this subchapter, including dental claims data files, enrollment and eligibility data files, medical claims data files, pharmacy claims data files, and provider files.

(5) Database--Has the meaning assigned by Insurance Code §38.402.

(6) Dental claims data file--A file that includes data as specified in the Texas APCD CDL about any dental claim or encounter for which some action has been taken on the claim during the reporting period, including payment, denial, adjustment, or other modification.

(7) Enrollment and eligibility data file--A file that provides identifying data as specified in the Texas APCD CDL about a person who is enrolled and eligible to receive health care coverage from a payor, whether or not the member used services during the reporting period, with one record per member, per month, per plan.

(8) Medical claims data file--A file that includes data as specified in the Texas APCD CDL about medical claims and other en-

counter information for which some action has been taken on the claim during the reporting period, including payment, denial, adjustment, or other modification.

(9) Payor--Has the meaning assigned by Insurance Code §38.402.

(10) Pharmacy claims data file--A file that includes data as specified in the Texas APCD CDL about all claims filed by pharmacies, including mail order and retail dispensaries, for prescriptions that were dispensed, processed, and paid during the reporting period.

(11) Provider file--A file that includes information as specified in the Texas APCD CDL about all providers (regardless of network status) that submitted claims that are included in the medical claims data file, dental claims data file, or pharmacy claims data file, with a separate record provided for each unique physical location for a provider who practices in multiple locations.

(12) Qualified research entity--Has the meaning assigned by Insurance Code §38.402.

(13) Stakeholder advisory group--Has the meaning assigned by Insurance Code §38.402.

(14) Submission guide--The document entitled "The Texas All-Payor Claims Database Data Submission Guide," created by the Center, that outlines administrative procedures and provides technical guidance for submitting data files.

(15) Texas APCD CDL--The standardized format, or common data layout (CDL), for All-Payor Claims Database (APCD) data files published by the Center and based on the "All-Payer Claims Database Common Data Layout" established by the National Association of Health Data Organizations and used with permission.

(16) Texas resident member--Any policyholder or certificate holder (subscriber) of a plan issued in Texas whose residence is within the state of Texas and all covered dependents, regardless of where the dependent resides.

§21.5403. Texas APCD Common Data Layout and Submission Guide.

(a) Payors must submit complete and accurate data files for all applicable plans as required by this subchapter and consistent with the Texas APCD CDL v1.09, released May 20, 2022. The Texas APCD CDL is available on the Center's website and:

(1) is modeled on the "All-Payer Claims Database Common Data Layout" published by the National Association of Health Data Organizations and used with permission;

(2) identifies which data elements payors are required to submit in each data file and which data elements are optional, consistent with Insurance Code §38.404(c), concerning Establishment and Administration of Database; and

(3) identifies the record specifications, definitions, code tables, and threshold levels for each required data element.

(b) The Center may issue technical guidance that provides flexibility regarding the existing requirements contained in the Texas APCD CDL, such as removing required data elements, clarifying specifications, increasing the maximum length, or decreasing the minimum threshold. However, such guidance may not modify statutory requirements, impose more stringent requirements, or increase the scope of the data being collected.

(c) The Center will establish, evaluate, and update data collection procedures within a submission guide, consistent with Insurance Code §38.404(f), concerning Establishment and Administration of Database. Notwithstanding subsection (b) of this section, in the event of an inconsistency between this subchapter and the submission guide, this subchapter controls.

§21.5404. Data Submission Requirements.

(a) Payors must submit the data files required by subsection (c) of this section to the Center according to the schedule provided in §21.5405 of this title (relating to Timing and Frequency of Data Submissions). Payors are responsible for submitting or arranging to submit all applicable data under this subchapter, including data with respect to benefits that are administered or adjudicated by another contracted or delegated entity, such as carved-out behavioral health benefits or pharmacy benefits administered by a pharmacy benefit manager. Payors may arrange for a third-party administrator or delegated or contracted entity to submit data on behalf of the payor, but may not submit data that duplicates data submitted by a third party.

(1) The Texas Health and Human Services Commission may submit data on behalf of all applicable payors participating in a plan or program identified in §21.5401(b)(17) - (b)(20) of this title (relating to Applicability).

(2) A payor that acts as an administrator on behalf of a health benefit plan or dental plan for which reporting is optional per Insurance Code §38.407, concerning Certain Entities Not Required to Submit Data, may ask the plan sponsor whether it elects or declines to participate in or submit data to the Center and may include data for such plans within the payor's data submission. Both the inquiry to and response from the plan sponsor should be in writing.

(3) A payor providing Medicare Supplement benefit plans may elect to submit Medicare Supplement benefit plan data to the Center.

(b) Payors or their designees must register with the Center each year to submit data, consistent with the instructions and procedures contained in the submission guide. Payors must communicate any changes to registration information by contacting the Center within 30 days using the contact information provided in the submission guide. Upon registration, the Center will assign a unique payor code and submitter code to be used in naming the data files and provide the credentials and information required to submit data files.

(c) Payors must submit the following files, consistent with the requirements of the Texas APCD CDL:

(1) enrollment and eligibility data files;

(2) medical claims data files;

(3) pharmacy claims data files;

(4) dental claims data files; and

(5) provider files.

(d) Payors must package all files being submitted into zip files that are encrypted according to the standard provided in the submission guide. Payors must submit the encrypted zip files to the Center using one of the following file submission methods:

(1) save the files on a Universal Serial Bus (USB) flash drive and use a secure courier to deliver the USB drive to the database according to delivery instructions provided in the submission guide;

(2) transmit the files to the Center's Managed File Transfer servers using the Secure File Transport Protocol (SFTP) and the credentials and transmittal information provided upon registration;

(3) upload files from an internet browser using the Hypertext Transfer Protocol Secure (HTTPS) protocol and the credentials and transmittal information provided upon registration; or

(4) transmit the files using a subsequent electronic method as provided in the data submission guide.

(e) Payors must name data files and zip files consistent with the file naming conventions specified by the Center in the submission guide.

(f) Payors must format all data files as standard 8-bit UCS Transformation Format (UTF-8) encoded text files with a ".txt" file extension and adhere to the following standards:

(1) use a single line per record and do not include carriage returns or line feed characters within the record;

(2) records must be delimited by the carriage return and line feed character combination;

(3) all data fields are variable field length, subject to the constraints identified in the Texas APCD CDL, and must be delimited using the pipe (|) character (ASCII=124), which must not appear in the data itself;

(4) text fields must not be demarcated or enclosed in single or double quotes;

(5) the first row of each data file must contain the names of data columns as specified by the Texas APCD CDL;

(6) numerical fields (e.g., ID numbers, account numbers, etc.) must not contain spaces, hyphens, or other punctuation marks, or be padded with leading or trailing zeroes;

(7) currency and unit fields must contain decimal points when appropriate;

(8) if a data field is not to be populated, a null value must be used, consisting of an empty set of consecutive pipe delimiters (||) with no content between them.

(g) Data files must include information consistent with the Texas APCD CDL that enables the data to be analyzed based on the market category, product category, coverage type, and other factors relevant for distinguishing types of plans.

(h) Payors must include data in medical, pharmacy, and dental claims data files for a given reporting period based on the date the claim is adjudicated, not the date of service associated with the claim. For example, a service provided in March, but adjudicated in April, would be included in the April data report. Likewise, any claim adjustments must be included in the appropriate data file based on the date the adjustment was made and include a reference that links the original claim to all subsequent actions associated with that claim. Payors must report medical, pharmacy, and dental claims data at the visit, service, or prescription level. Payors must also include claims for capitated services with all medical, pharmacy, and dental claims data file submissions.

(i) Payors must include all payment fields specified as required in the Texas APCD CDL. With respect to medical, pharmacy, and dental claims data file submissions, payors must also:

(1) include coinsurance and copayment data in two separate fields;

(2) clearly identify claims where multiple parties have financial responsibility by including a Coordination of Benefits, or COB, notation; and

(3) include specified types of denied claims and identify a denied claim either by a denied notation or assigning eligible, allowed, and payment amounts of zero. The data submission guide will specify the types of denied claims that must be included on the basis of the claim adjustment reason code associated with the denial. In general, denied claims are not required when the reason for the denial was incomplete claim coding or duplicative claims. Denied claims are required when they accurately reflect care that was delivered to an eligible member but not covered by a plan due to contractual terms, such as benefit maximums, place of service, provider type, or care deemed not medically necessary or experimental or investigational. Payors are not required to include data for rejected claims or claims that are denied because the patient was not an eligible member.

(j) Every data file submission must include a control report that specifies the count of records and, as applicable, the total allowed amount and total paid amount.

(k) Unless otherwise specified, payors must use the code sources listed and described in the Texas APCD CDL within the member eligibility and enrollment data file and medical, pharmacy, and dental claims data file and provider file submissions. When standardized values for data fields are available and stated within the Texas APCD CDL, a payor may not submit data that uses a unique coding system.

(l) Payors must use the member's social security number as a unique member identifier (ID) or assign an alternative unique member ID as provided in this subsection.

(1) If a payor collects the social security number for the subscriber only, the payor must assign a discrete two-digit suffix for each member under the subscriber's contract.

(2) If a payor does not collect the subscriber's social security number, the payor must assign a unique member ID to the subscriber and the member in its place. The payor must also use a discrete two-digit suffix with the unique member ID to associate members under the same contract with the subscriber.

(3) A payor must use the same unique member ID for the member's entire period of coverage under a particular plan. If a change in the unique member ID or the use of two different unique member IDs for the same individual is unavoidable, the payor must provide documentation, if available, linking the member IDs in the form and method provided by the Center.

(m) When standardized values for data variables are available and stated within the Texas APCD CDL, no specific or unique coding systems will be permitted as part of the health care claims data set submission.

(n) Within the enrollment and eligibility data files, payors must report member enrollment and eligibility information at the individual member level. If a member is covered as both a subscriber and a dependent on two different policies during the same month, the payor must submit two member enrollment and eligibility records. If a member has two different policies for two different coverage types, the payor must submit two member enrollment and eligibility records.

(o) Payors must include a header and trailer record in each data file submission according to the formats described in the Texas APCD CDL. The header record is the first record of each separate file submission, and the trailer record is the last.

§21.5405. Timing and Frequency of Data Submissions.

(a) Payors must submit monthly data files according to the following schedule:

(1) January data must be submitted no later than May 7 of that year;

(2) February data must be submitted no later than June 7 of that year;

(3) March data must be submitted no later than July 7 of that year;

(4) April data must be submitted no later than August 7 of that year;

(5) May data must be submitted no later than September 7 of that year;

(6) June data must be submitted no later than October 7 of that year;

(7) July data must be submitted no later than November 7 of that year;

(8) August data must be submitted no later than December 7 of that year;

(9) September data must be submitted no later than January 7 of the following year;

(10) October data must be submitted no later than February 7 of the following year;

(11) November data must be submitted no later than March 7 of the following year; and

(12) December data must be submitted no later than April 7 of the following year;

(b) Except as provided in subsections (c) and (d) of this section, payors must submit test data files, historical data files, and monthly data files according to the dates specified by the Center, subject to the following requirements:

(1) the Center will provide notice of the timeline for payors to submit registration and test data no later than 90 days before the data is due, and test data will be due no sooner than October 1, 2022;

(2) the Center will provide notice of the timeline for submitting historical data, which must include data for reporting periods spanning from January 1, 2019, to the most recent monthly reporting period, no later than 120 days before the data is due, and historical data will be due no sooner than January 1, 2023; and

(3) the Center will provide notice of the timeline for submitting monthly data no later than 180 days before the commencement of the monthly data submission, and the first monthly data submission date will be no sooner than March 1, 2023.

(c) A payor with fewer than 10,000 covered lives in plans that are subject to reporting under this subchapter as of December 31 of the previous year must begin reporting no later than 12 months after the dates otherwise required, as specified by the Center, consistent with subsection (a) of this section. The payor must register with the Center to document the payor's eligibility for this extension.

(d) A payor may request a temporary exception from one or more requirements of this subchapter or the Texas APCD CDL by submitting a request to the Center no less than 30 calendar days before the date the payor is otherwise required to comply with the requirement. Except as provided in paragraph (2) of this subsection, the Center may grant an exception if the payor demonstrates that compliance would impose an unreasonable cost or burden relative to the public value that would be gained from full compliance.

(1) An exception may not last more than 12 consecutive months.

(2) An exception may not be granted from any requirement contained in Insurance Code Chapter 38, Subchapter I.

(3) The Center may request additional information from a payor in order to make a determination on an exception request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received.

(4) A request for an exception that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (3) of this subsection, the 14-day timeline begins the day after the payor submits such information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an exception may be deemed withdrawn by the Center at the end of the 14-day period.

(e) A payor that is unable to meet the reporting schedule provided by this section may submit a request for an extension to the Center before the reporting due date. The Center may grant a request for good cause at its discretion.

(1) The Center may request additional information from a payor in order to make a determination on an extension request. A request for additional information must be in writing and must be submitted to the payor within 14 calendar days from the date the payor's request is received.

(2) A request for an extension that is neither accepted nor rejected by the Center within 14 calendar days from the date the payor's request is received will be deemed accepted. If the Center has requested additional information from a payor under paragraph (1) of this subsection, the 14-day timeline begins the day after the payor submits such information. If a payor does not respond to or fails to provide the Center with additional information as requested, the payor's request for an extension may be deemed withdrawn by the Center at the end of the 14-day period.

(f) The Center will assess each data submission to ensure the data files are complete, accurate, and correctly formatted.

(g) The Center will communicate receipt of data within 14 calendar days, inform the payor of the data quality assessments, and specify any required data corrections and resubmissions.

(h) Upon receipt of a resubmission request, the payor must respond within 14 calendar days with either a revised and corrected data file or an extension request.

(i) If a payor fails to submit required data or fails to correct submissions rejected due to errors or omissions, the Center will provide written notice to the payor. If the payor fails to provide the required information within 30 calendar days following receipt of said written notice, the Center will notify the department of the failure to report. The department may pursue compliance with this subchapter via any appropriate corrective action, sanction, or penalty that is within the authority of the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202056

Allison Eberhart
Deputy General Counsel
Texas Department of Insurance
Effective date: June 16, 2022
Proposal publication date: April 8, 2022
For further information, please call: (512) 676-6584

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PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §276.1

INTRODUCTION. The Office of Injured Employee Counsel (OIEC) adopts an amendment to existing rule at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §276.1. The proposed amendment updates the rule to ensure efficient agency operations and maintain consistency with statute and rules.

The amendment is adopted without changes to the proposed amendment published in the April 22, 2022, issue of the *Texas Register* (47 TegReg 2110). OIEC adopts the amendment to §276.1. The rule will not be republished.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The adopted amendment to §276.1, Definitions, removes the requirement for ombudsmen to have an adjuster's license. The requirement of an adjuster's license is not required under the Labor Code. This change also makes the rule consistent with §276.10.

SUMMARY OF COMMENTS. OIEC did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The Public Counsel adopts the amendment to §276.1 as authorized under Labor Code §404.006 to adopt rules as necessary to implement Chapter 404 of the Labor Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202052
Benjamin de Leon
Regional Staff Attorney
Office of Injured Employee Counsel
Effective date: June 16, 2022
Proposal publication date: April 22, 2022
For further information, please call: (512) 804-4194

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28 TAC §276.5

INTRODUCTION. The Office of Injured Employee Counsel (OIEC) adopts an amendment to an existing rule at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §276.5. The proposed amendment updates the rule to maintain consistency with statute and OIEC rules.

The amendment is adopted without changes to the proposed amendment published in the April 22, 2022, issue of the *Texas Register* (47 TegReg 2111). The rule will not be republished.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The adopted amendment to §276.5, Employer's Notification of Ombudsman Program to Employees, removes a reference to an adjuster's license located in the attached graphic found in §276.5(c) titled: "NOTICE TO EMPLOYEES CONCERNING ASSISTANCE AVAILABLE IN THE WORKERS' COMPENSATION SYSTEM FROM THE OFFICE OF INJURED EMPLOYEE COUNSEL". An adjuster's license is not required under the Labor Code. This change also makes the rule consistent with §§276.1 and 276.10.

SUMMARY OF COMMENTS. OIEC did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Public Counsel adopts the amendment to §276.5 as authorized under Labor Code §404.006 to adopt rules as necessary to implement Chapter 404 of the Labor Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202054
Benjamin de Leon
Regional Staff Attorney
Office of Injured Employee Counsel
Effective date: June 16, 2022
Proposal publication date: April 22, 2022
For further information, please call: (512) 804-4194

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28 TAC §276.6

INTRODUCTION. The Office of Injured Employee Counsel (OIEC) adopts an amendment to an existing rule at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §276.6. The proposed amendment updates office location information.

The amendment is adopted with changes to the proposed amendment published in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2110). The rule will be republished.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The adopted amendment to §276.6, Notice of Injured Employee Rights and Responsibilities, updates the rule with the most current information about the Office of Injured Employee Counsel. This change is part of a general effort to remove complexity from and add accuracy and clarity to agency rules.

SUMMARY OF COMMENTS. OIEC did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The Public Counsel adopts the amendment to §276.6 as authorized under Labor Code §404.006 to adopt rules as necessary to implement Chapter 404 of the Labor Code.

§276.6. Notice of Injured Employee Rights and Responsibilities.

(a) The Public Counsel adopts by reference the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice) in accordance with Labor Code §404.109.

(b) The Notice shall be distributed by the Texas Department of Insurance, Division of Workers' Compensation (Division).

(c) The Notice may be obtained from the:

(1) Office of Injured Employee Counsel's website at www.oiec.texas.gov or at the physical location located at 1601 Congress Avenue, Austin, Texas 78701; or

(2) Texas Department of Insurance, Division of Workers' Compensation website at www.tdi.texas.gov or at the physical location located at 1601 Congress Avenue, Austin, Texas 78701.

(d) This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under Labor Code Title 5.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202053
Benjamin de Leon
Regional Staff Attorney
Office of Injured Employee Counsel
Effective date: September 1, 2022
Proposal publication date: April 22, 2022
For further information, please call: (512) 804-4194

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SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.12

INTRODUCTION. The Office of Injured Employee Counsel (OIEC) adopts the repeal of existing rule 28 Texas Administrative Code (TAC), Chapter 276, Subchapter B, §276.12. The information in this rule is found in the Texas Labor Code and in OIEC policy. The rule is not necessary and should be repealed.

The repeal is adopted without changes as published in the April 22, 2022, issue of the *Texas Register* (47 TegReg 2113). OIEC adopts the repeal of §276.12. The rule will not be republished.

REASONED JUSTIFICATION. OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The adopted repeal of §276.12, Procedures for Private Meetings with Unrepresented Injured Employees Prior to a Workers' Compensation Proceeding, eliminates a requirement that is already found in Texas Labor Code §404.151, which addresses the procedures for meetings with unrepresented injured employees prior to an informal or formal hearing. In addition, existing OIEC policy addresses the rule content. As a result, the agency rule is not necessary.

SUMMARY OF COMMENTS. OIEC did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The Public Counsel adopts the repeal of §276.12 as authorized under Labor Code §404.006 to adopt rules as necessary to implement Chapter 404 of the Labor Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2022.

TRD-202202055
Benjamin de Leon
Regional Staff Attorney
Office of Injured Employee Counsel
Effective date: June 16, 2022
Proposal publication date: April 22, 2022
For further information, please call: (512) 804-4194

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Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board (Board) proposes to review and consider for readoption, revision, or repeal the chapters listed below, in their entirety:

Chapter 277, Practice and Procedure, and

Chapter 279, Interpretations.

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.

During the review process, the Board may determine whether a specific rule requires amendments to refine the Board's complaint or disciplinary process; whether the rules reflect current practice interpretations; whether the rules reflect current 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. 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 before final adoption or repeal.

Comments on the review of Chapter 277, General Rules, and Chapter 279, Interpretations, may be submitted to Texas Optometry Board, Attn: Kelly Parker, 333 Guadalupe, Suite 2-420, Austin, Texas 78701 or *Kelly.parker@tob.texas.gov.* The deadline for comments is thirty days after the date this notice is published in the *Texas Register.*

TRD-202202075
Kelly Parker
Executive Director
Texas Optometry Board
Filed: May 27, 2022

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services; Subchapter BB, Commissioner's Rules Concerning State Plan for Educating English Learners; Subchapter DD, Commissioner's Rules Concerning High School Equivalency Programs; Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program; Subchapter FF, Commissioner's Rules Concerning Transition Assistance for Highly Mobile Students Who Are Homeless or in Substitute Care; Subchapter GG, Commissioner's Rules Concerning Dropout Prevention Strategies; and Subchapter HH, Commissioner's Rules Concerning Education in a Juvenile Residential Facility, pursuant to Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 89 in the January 14, 2022 issue of the *Texas Register* (47 TexReg 107).

Relating to the review of 19 TAC Chapter 89, Subchapter AA, TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. TEA received comments related to the review of Subchapter AA. Following is a summary of the comments received and the agency responses.

Comment: Disability Rights of Texas (DRTx) requested that TEA readopt §89.1076 with an amendment to ensure that TEA is in full compliance with corrective actions imposed by the U.S. Department of Education in the area of statewide supervision and monitoring of services to students with disabilities and specifically reference dyslexia services under Texas Education Code (TEC), §38.003.

Response: The agency disagrees. A specific reference to TEC, §38.003, in §89.1076 is not necessary to ensure compliance with corrective actions.

Comment: DRTx requested that the term "hearing impairment" be replaced with the term "deaf or hard of hearing" in §89.1080. DRTx stated that using the term "deaf or hard of hearing" would be more consistent with TEA's definition of disability categories in §89.1040, Eligibility Criteria.

Response: The agency agrees that the term "hearing impairment" should be updated to "deaf or hard of hearing."

Comment: DRTx recommended that TEA readopt §89.1100, Memorandum of Understanding on Coordination of Services to Disabled Persons, with an amendment to update references to state agencies because the language currently refers to state agencies that no longer exist in state government.

Response: The agency agrees that there have been name changes to some agencies and anticipates addressing the needed changes when it next negotiates the memorandum of understanding.

Comment: DRTx recommended that TEA readopt §89.1115, Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities, with an amendment to update references to state agencies

because the language currently refers to state agencies that no longer exist in state government.

Response: The agency agrees that there have been name changes to some agencies and anticipates addressing the needed changes when it next negotiates the memorandum of understanding.

At a later date, TEA anticipates proposing amendments to Subchapter AA to update terminology and references and remove outdated provisions.

Relating to the review of 19 TAC Chapter 89, Subchapter BB, TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter BB. At a later date, TEA anticipates updating rules to align with recent legislation and clarify policies and procedures for the education of emergent bilingual students.

Relating to the review of 19 TAC Chapter 89, Subchapter DD, TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter DD. No changes are necessary as a result of the review of Subchapter DD.

Relating to the review of 19 TAC Chapter 89, Subchapter EE, TEA finds that the reasons for Subchapter EE continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter EE. At a later date, TEA anticipates updating provisions related to appealing non-renewal or revocation of funding.

Relating to the review of 19 TAC Chapter 89, Subchapter FF, TEA finds that the reasons for adopting Subchapter FF continue to exist and readopts the rules. TEA received no comments related to the review of Subchapter FF. At a later date, TEA anticipates updating rules to align with statute and provide clarification.

Relating to the review of 19 TAC Chapter 89, Subchapter GG, TEA finds that the reasons for adopting Subchapter GG continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter GG. At a later date, TEA anticipates updating the rule to align with the recodification of statute.

Relating to the review of 19 TAC Chapter 89, Subchapter HH, TEA finds that the reasons for adopting Subchapter HH continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter HH. No changes are necessary as a result of the review.

TRD-202202093
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 1, 2022

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 100, Charters, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools, pursuant to Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 100, Subchapter AA, in the March 6, 2020 issue of the *Texas Register* (45 TexReg 1722).

Relating to the review of 19 TAC Chapter 100, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received one comment related to the review of Subchapter AA. Following is a summary of the comment received and the corresponding response.

Comment: A Texas school district administrator commented that charter schools as for-profit public schools should have two rules established prior to building charter schools: (1) charter schools should not be allowed to build unless they are within two miles of an underperforming school (rated C, D, or F); and (2) if charter schools are built close a high-performing school, they should only enroll students that public schools aren't reaching.

Response: The agency disagrees. Charter schools are not for-profit public schools. The Texas Education Code (TEC) states that the commissioner may grant a charter on the application of an eligible entity. These eligible entities include: (1) an institution of higher education; (2) a private or independent institution of higher education; (3) a non-profit organization; or (4) a governmental entity. The TEC does not place limits on where charter schools may be located but does require that the commissioner approve or deny applications based on a number of criteria, including impact statements from affected school districts. The TEC also requires that the commissioner give priority to applicants that propose an open-enrollment charter school campus to be located in the attendance zone of a school district campus assigned an unacceptable performance rating for the two preceding school years. More information about the criteria established by the commissioner is available in each generation's charter application.

At a later date, TEA anticipates proposing updates to the rules in Subchapter AA.

This concludes the review of 19 TAC Chapter 100.

TRD-202202094
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 1, 2022

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Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 105, Foundation School Program, Subchapter AA, Commissioner's Rules Concerning Optional Extended Year Program; Subchapter BB, Commissioner's Rules Concerning Charter School Funding; and Subchapter CC, Commissioner's Rules Concerning Severance Payments, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 105 in the January 28, 2022 issue of the *Texas Register* (47 TexReg 349).

Relating to the review of Chapter 105, Subchapter AA, TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter AA. At a later date, TEA anticipates revising references to outdated statutory provisions.

Relating to the review of Chapter 105, Subchapter BB, TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter BB. No changes to Subchapter BB are necessary as a result of the review.

Relating to the review of Chapter 105, Subchapter CC, TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rule. TEA received no comments related to the review of Subchapter CC. Effective June 14, 2022, TEA modified the rule to include open-enrollment charter schools, as authorized by House Bill 189, 87th Texas Legislature, Regular Session, 2021.

This concludes the review of Chapter 105.

TRD-202202095

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 1, 2022

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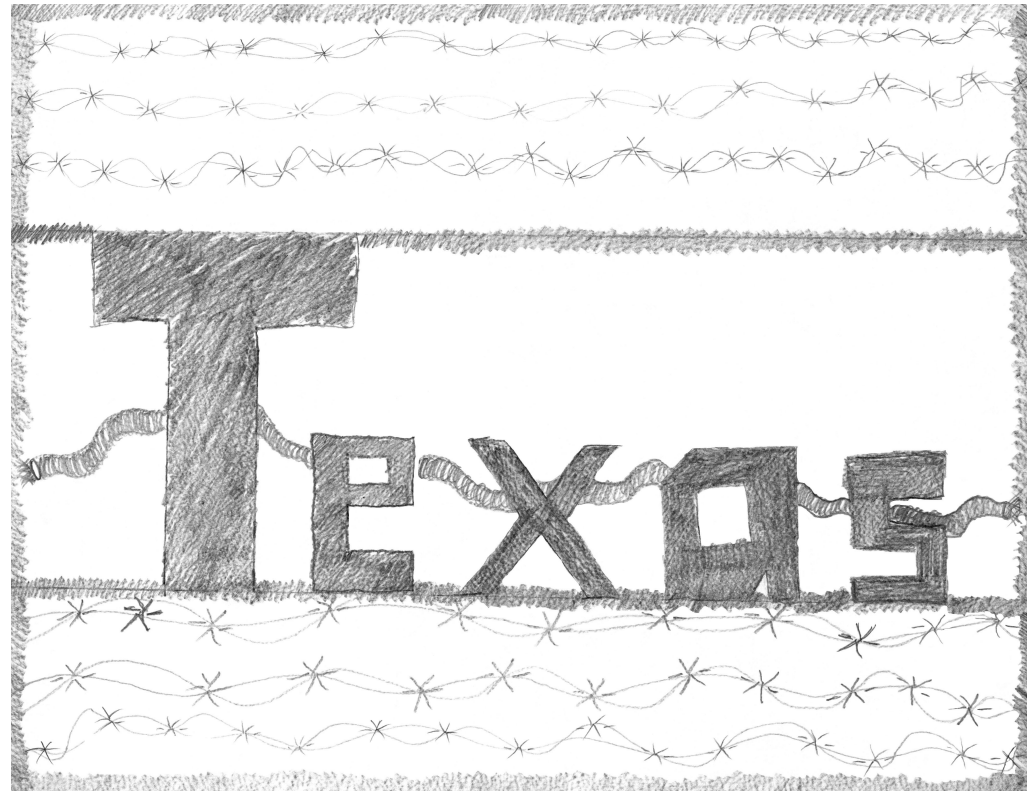
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IN ADDITION

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.

Brazos Valley Council of Governments

Workforce Solutions Brazos Valley Board Request for Proposal for the Management and Operations of Workforce Center Services And Business Services

The Workforce Solutions Brazos Valley Board (WSBVB) is seeking a single contractor for the management and operation of the Workforce Center Services and Business Services in the Brazos Valley Region and will release a Request for Proposal (RFP) for these services on June 1, 2022. The RFP will be posted at www.bvjobs.org. The contact person for this procurement is Barbara Clemmons. Difficulties downloading the RFP document shall be referred to Leslie Davis at leslie.cooks@bvcog.org or (979) 595-2801, ext. 2011.

These services will be provided for the residents of the Brazos Valley Region which includes Brazos, Washington, Robertson, Burleson, Madison, Leon, and Grimes counties. Workforce Solutions Brazos Valley Board (WSBVB) will receive proposals from private and public organizations or individuals to provide management as an independent contractor for workforce center services and business services in the seven counties in the Brazos Valley Region, and the initial contract will be effective October 1, 2022. The resulting contract may be renewed up to four times, in one-year increments, depending on the contractor's performance and availability of funds.

A Pre-Proposal Conference will be held through a telephone conference call on Tuesday, June 14, 2022, at 10:00 a.m. CST. The call-in number is (979) 595-2802. Proposers will have the opportunity to ask questions about the procurement during the proposer's conference call. Attendance on the pre-proposal conference call is not mandatory; however, it is strongly suggested that all potential proposers participate in the telephone conference. **If Proposers cannot attend the proposer's conference call on Tuesday, June 14, 2022, at 10:00 a.m. CST, they can submit their questions in writing concerning this RFP to Barbara Clemmons at bclemmons@bvcog.org no later than Friday, June 17, 2022, 5:00 p.m. CST. Answers to all questions received will be posted to www.bvjobs.org no later than the close of business on Wednesday, June 22, 2022, 5:00 p.m. CST.**

Proposals in response to this RFP will be due no later than 2:00 p.m. CST, July 19, 2022. Hand-delivered, Fed EX or UPS proposals shall be addressed to Workforce Solutions Brazos Valley, Request for Proposal for the Management and Operations of Workforce Center Services, Center for Regional Services, 3991 East 29th Street, Bryan, Texas 77802. Mailed proposals shall be addressed to Workforce Solutions Brazos Valley, Request for Proposal for the Management and Operations of Workforce Center Services, P.O. Box 4128, Bryan, Texas 77805. Proposals arriving at the Center for Regional Services after the due date and time will not be accepted, regardless of the postmarked date.

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Relay Texas (800) 735-2989 (TTY) and 711 Voice.

TRD-202202041
Vonda Morrison
Program Manager
Brazos Valley Council of Governments
Filed: May 25, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/06/22 - 06/12/22 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 06/06/22 - 06/12/22 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202202087
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 31, 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 **July 13, 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 ap-

plicable 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 **July 13, 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: AA ADAM'S INC dba Quickway Food Store 2; DOCKET NUMBER: 2022-0012-PST-E; IDENTIFIER: RN101797991; LOCATION: Bedford, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Adolfo Trevino Incorporated dba El Vaquero Pit Stop; DOCKET NUMBER: 2022-0269-PST-E; IDENTIFIER: RN105051254; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Aqua Development, Incorporated; DOCKET NUMBER: 2021-1399-UTL-E; IDENTIFIER: RN102674983; LOCATION: Huffman, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Armando Guerrero; DOCKET NUMBER: 2022-0308-PST-E; IDENTIFIER: RN101433464; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST); RULES VIOLATED: 30 TAC §334.49(e) and §334.54(b)(1) and (3), (d)(2)(B), and (e)(5), and TWC, §26.3475(d), by failing to assure that the vent lines are kept open and functioning, and failing to ensure that any residue from stored regulated substances which remain in the temporarily out-of-service USTs did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity, additionally, failing to provide financial assurance or conduct a site check and perform any necessary corrective actions, and furthermore, failing to provide adequate corrosion protection for the UST system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: City of Hudson; DOCKET NUMBER: 2021-0433-MWD-E; IDENTIFIER: RN101517878; LOCATION: Hudson, Angelina 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 WQ0011826001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $8,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,600; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Wills Point; DOCKET NUMBER: 2021-1021-PWS-E; IDENTIFIER: RN101388973; LOCATION: Wills Point, Van Zandt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the locational running annual average; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data to the ED by the tenth day of the month following the end of the reporting period for September and October 2014; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Graylaur Corporation; DOCKET NUMBER: 2022-0345-WQ-E; IDENTIFIER: RN111287520; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: HILL COUNTY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-0234-PWS-E; IDENTIFIER: RN101189223; LOCATION: Whitney, Hill County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well production capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide a service pump capacity of 2.0 gpm per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.45(b)(2)(C) and THSC, §341.0315(c), by failing to provide a transfer pump capacity of 0.6 gpm per connection with the largest pump out-of-service; PENALTY: $2,950; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Loper, Shane; DOCKET NUMBER: 2022-0373-OSS-E; IDENTIFIER: RN111406377; LOCATION: Kirbyville, Jasper County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: SANGAM INVESTMENTS INCORPORATED dba Vega Truck Stop; DOCKET NUMBER: 2022-0290-PST-E; IDENTIFIER: RN101886026; LOCATION: Vega, Oldham County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,306; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; RE-

GIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: SUPER GOLDEN EAGLE BEER BARN CORP dba Super Handy 4; DOCKET NUMBER: 2022-0188-PST-E; IDENTIFIER: RN101754828; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: THE FALLS ENTERPRISES, INCORPORATED dba The Falls Drive In; DOCKET NUMBER: 2022-0074-PST-E; IDENTIFIER: RN101914158; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 and associated pressurized piping installed on or after January 1, 2009; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Voyles, LLC; DOCKET NUMBER: 2022-0394-PWS-E; IDENTIFIER: RN105971121; LOCATION: Flatonia, Fayette County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply; PENALTY: $100; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(14) COMPANY: WHITE HORSE CHRISTIAN ACADEMY, INCORPORATED; DOCKET NUMBER: 2022-0384-PWS-E; IDENTIFIER: RN109985689; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(C), by failing to seal the space between the casing and drill hole by using enough cement under pressure to completely fill and seal the annular space between the well casing and the drill hole; PENALTY: $375; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: WOODROW ROAD / DISCOUNT RV STORAGE, L.L.C.; DOCKET NUMBER: 2022-0298-PWS-E; IDENTIFIER: RN110725330; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director (ED) for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 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, based on a sanitary survey conducted by the ED; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: $2,892; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202202088
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 31, 2022

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Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 168676

APPLICATION. Champion Concrete, Inc., 180 Traders Mine Road, Iron Mountain, Michigan 49801-1447 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 168676 to authorize the operation of two permanent concrete batch plants. The facility is proposed to be located one mile south on LaQuinta Road off of Texas Highway 361, Gregory, San Patricio County, Texas 78359. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.900489&lng=-97.281261&zoom=13&type=r. This application was submitted to the TCEQ on April 12, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on April 25, 2022.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.** *This public hearing will be held*

*concurrently with the public hearing for permit number **169026** submitted by the Applicant for Air Quality Standard Permit for Concrete Batch Plant with Enhanced Controls.*

The Public Hearing is to be held:

Tuesday, July 12, 2022, at 6:00 p.m.

Portland Community Center

2000 Billy G. Webb Drive

Portland, Texas 78374

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at 500 N. Shoreline Blvd., Suite 500, Corpus Christi, Texas 78401-0318, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Champion Concrete, Inc., 180 Traders Mine Road, Iron Mountain, Michigan 49801-1447, or by calling Mr. Mark Fitzpatrick, Business Unit Manager at (906) 302-2416.

Amended Notice Issuance Date: *May 26, 2022*

TRD-202202077
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 27, 2022

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Enforcement Orders

An agreed order was adopted regarding Tenaska Gateway Partners, LTD., Docket No. 2018-1009-AIR-E on June 1, 2022 assessing $94,251 in administrative penalties with $18,850 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 Texas Materials Group, Inc. fka Oldcastle Materials Texas, Inc., Docket No. 2018-1115-AIR-E on June 1, 2022 assessing $45,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 voestalpine Texas LLC, Docket No. 2018-1266-MLM-E on June 1, 2022 assessing $ 658,926 in administrative penalties with $ 131,785 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kb Foundation Of Texas, Docket No. 2019-1493-MWD-E on June 1, 2022 assessing $47,138 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Charles Robert Collins, Docket No. 2020-0307-MSW-E on June 1, 2022 assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding New Hope Corner Store Llc, Docket No. 2020-0766-PST-E on June 1, 2022 assessing $12,471 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, 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 Harris County Water Control and Improvement District No. 21, Docket No. 2020-0970-MWD-E on June 1, 2022 assessing $16,500 in administrative penalties with $3,300 deferred. Information concerning any aspect of this order may be obtained by contacting Ellen Ojeda, 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 AZLE INVESTMENT INC dba Maria Food Store, Docket No. 2020-1134-PST-E on June 1, 2022 assessing $7,875 in administrative penalties with $1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 Circle 7 Dairy LLC and GRAND CANYON DAIRY LLC, Docket No. 2020-1361-AGR-E on June 1, 2022 assessing $15,669 in administrative penalties with $3,133 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Corpus Christi, Docket No. 2020-1370-AIR-E on June 1, 2022 assessing $14,175 in administrative penalties with $2,835 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Covia Holdings Corporation, Docket No. 2020-1476-IWD-E on June 1, 2022 assessing $9,563 in administrative penalties with $1,912 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Veronica Breedlove, Docket No. 2021-0132-MLM-E on June 1, 2022 assessing $2,754 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Spaceage Business Investments Inc, Docket No. 2021-0138-PST-E on June 1, 2022 assessing $5,280 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Casey Kurnath, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of College Station, Docket No. 2021-0163-MWD-E on June 1, 2022 assessing $12,375 in administrative penalties with $2,475 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Jimmy Ray Bland, Docket No. 2021-0216-WQ-E on June 1, 2022 assessing $3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP and LyondellBasell Acetyls, LLC, Docket No. 2021-0238-IWD-E on June 1, 2022 assessing $92,711 in administrative penalties with $18,542 deferred. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Odfjell Terminals (Houston) Inc., Docket No. 2021-0525-AIR-E on June 1, 2022 assessing $9,150 in administrative penalties with $1,830 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 MURPHY OIL USA, INC. dba Murphy USA 5665 and Murphy USA 6613, Docket No. 2021-0693-PST-E on June 1, 2022 assessing $40,301 in administrative penalties with $8,060 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202202097
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 1, 2022

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 169026

APPLICATION. Champion Concrete, Inc., 180 Traders Mine Road, Iron Mountain, Michigan 49801-1447 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 169026 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 4934 North US Highway 181, Gregory, San Patricio County, Texas 78359. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.908611&lng=-97.295556&zoom=13&type=r. This application was submitted to the TCEQ on May 9, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on May 18, 2022.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.** This public hearing will be held concurrently with the public hearing for permit number **168676** submitted by the Applicant for Air Quality Standard Permit for Concrete Batch Plant with Enhanced Controls.

The Public Hearing is to be held:

Tuesday, July 12, 2022, at 6:00 p.m.

Portland Community Center

2000 Billy G. Webb Drive

Portland, Texas 78374

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at 500 N. Shoreline Blvd., Suite 500, Corpus Christi, Texas 78401-0318, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Champion Concrete, Inc., 180 Traders Mine Road, Iron Mountain, Michigan 49801-1447, or by calling Mr. Mark Fitzpatrick, Business Unit Manager at (906) 302-2416.

Notice Issuance Date: May 25, 2022

TRD-202202076
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 27, 2022

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Notice of District Petition

Notice issued June 1, 2022

TCEQ Internal Control No. D-03162022-026; Brookshire Land Holding Company, LLC, a Texas limited liability company (Petitioner) filed a petition for the creation of Waller County Municipal Utility District No. 41 (District) of Hays County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is only one lienholder, Western Alliance Bank, an Arizona corporation on the property to be included in the proposed District and the aforementioned entity has consented to the petition; (3) the proposed District will contain approximately 211.21 acres located within Waller County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village in Texas.

The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend water works and sanitary sewer system for domestic and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend roads, parks and recreational facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $40,345,000 ($25,300,000 for water, wastewater, and drainage, plus $12,675,000 for roads, plus $2,370,000 for recreation).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202202098
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 1, 2022

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Notice of Hearing on Elijah Washington: SOAH Docket No. 582-22-2269; TCEQ Docket No. 2022-0239-LIC

APPLICATION.

Elijah Washington, 8425 Ahern Drive, Apt. 918, San Antonio, Texas 78216, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Landscape Irrigator License. The Executive Director denied Mr. Washington's application for cause. Mr. Washington has requested a formal hearing on the Executive Director's decision. During the review of Mr. Washington's application, the Executive Director discovered that Mr. Washington was convicted of two Class B Misdemeanors and received deferred adjudication for a Class B Misdemeanor and a Second-Degree Felony. The Executive Director denied Mr. Washington's application because these citations were for offenses that directly relate to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. - June 23, 2022

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The

preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Washington should be issued a Landscape Irrigator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Elijah Washington fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: May 25, 2022

TRD-202202043
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 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 **July 13, 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 July 13, 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: Janelle Bullock; DOCKET NUMBER: 2021-0432-MSW-E; TCEQ ID NUMBER: RN111011342; LOCATION: 147 Spur 3219, Killeen, Bell County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $2,625; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202202082
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 31, 2022

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date

on which the public comment period closes, which in this case is **July 13, 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 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 July 13, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Beeville; DOCKET NUMBER: 2019-1179-PWS-E; TCEQ ID NUMBER: RN101419133; LOCATION: 400 North Washington Street, Beeville, Bee County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) throughout the distribution system at all times; 30 TAC §290.110(c)(4)(C), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; 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(f)(2)and (3)(A)(iv) and (B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.44(h)(4)(C), by failing to properly complete a test report by the recognized backflow prevention assembly tester for each assembly tested and on a form approved by the ED; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results providing that the well is in a non-deteriorated condition; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and by failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the maximum contaminant levels for haloacetic acids and total trihalomethanes; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED; PENALTY: $5,200; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(2) COMPANY: City of Leona; DOCKET NUMBER: 2020-0762-PWS-E; TCEQ ID NUMBER: RN101404002; LOCATION: 350 feet from the intersection of Texas State Highway 75 and Farm-to-Market Road 977, Leona, Leon County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j) and TCEQ Agreed Order Docket Number 2018-0016-PWS-E, Ordering Provision Number 2.a.iii, by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements; 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Agreed Order Docket Number 2018-0016-PWS-E, Ordering Provision Numbers 2.a.iv. and 2.b.ii, by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to customers and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED; PENALTY: $253; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202202081
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: May 31, 2022

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Antonina LLC dba Food & Fuel Express: SOAH Docket No. 582-22-2669; TCEQ Docket No. 2021-0064-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 23, 2022

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 15, 2021, concerning assessing administrative penalties against and requiring certain actions of Antonina LLC dba Food & Fuel Express, for violations in Hays County, Texas, of: Texas Health & Safety Code §382.085(b) and 30 Texas Administrative Code §115.225.

The hearing will allow Antonina LLC dba Food & Fuel Express, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Antonina LLC dba Food & Fuel Express,

the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Antonina LLC dba Food & Fuel Express to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Antonina LLC dba Food & Fuel Express, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and, Texas Water Code chs. 7 and 26; Texas Health & Safety Code ch. 382 and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting David Keagle, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week before the hearing.

Issued: May 25, 2022

TRD-202202042
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 2022

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Larry David: SOAH Docket No. 582-22-2689; TCEQ Docket No. 2020-1244-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 23, 2022

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 1, 2021, concerning assessing administrative penalties against and requiring certain actions of Larry David, for violations in Ellis County, Texas, of: Texas Water Code §26.121 and 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow Larry David, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Larry David, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Larry David to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Larry David, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the

public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week before the hearing.

Issued: May 25, 2022

TRD-202202044
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 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 May 1, 2022 to May 20, 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, May 27, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, June 26, 2022.

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Fish and Wildlife Service

Location: The project site is on San Antonio Bay along the eastern shoreline of the Aransas National Wildlife Refuge in its Blackjack Unit. The Blackjack Unit is bounded by St. Charles Bay on the west, San Antonio Bay on the east, and the Gulf Intracoastal Waterway along the south. It is 10 miles long northeast to southwest and 2 to 7 miles wide northwest to southeast. The site is approximately 8 miles south southeast of Austwell, in Aransas County, Texas.

Latitude & Longitude (NAD 83): 28.275503, -96.798161

Project Description: Construct a shoreline protection and bluff stabilization project for the eroding shoreline of the Aransas National Wildlife Refuge along San Antonio Bay, particularly along Dagger Point. Project would include a continuous breakwater (BW) around Dagger Point and a series of segmented rock BWs on the northern and southern alignments parallel and offshore of the existing shoreline and provide toe protection to the eroding bluffs. A low-crested rubble-mound (rock) structure is proposed for the BWs and as toe protection for the high bluff areas. The proposed design of the BW structures includes a max. crest elevation between +3.0 to +4.0 feet (ft) North American Vertical Datum of 1988 (NAVD88) with a crest width of 10 ft. The bayward face of the BW would have a slope of 1-ft vertical drop for every 5 ft of horizontal run (5H:1V) with the landward slope of 3H:1V. Approx. 4,200 ft of armored toe protection will be constructed at the base of the high bluffs including a series of near shore BWs and groins with sand fill constructed along a 1,300 ft section of high bluffs at Dagger Point. Sand of similar grain size and mineralogy to native sediment will be obtained from either a commercial source or from material dredged from the Gulf Intracoastal Waterway. Low bluffs would be regraded to reduce the angle of the slope and then planted with vegetation.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2018-00279. 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: 22-1303-F2

FEDERAL AGENCY ACTIONS:

Applicant: Port of Corpus Christi Authority

Location: The project site is located in the Corpus Christi Ship Channel, Corpus Christi Inner Harbor.

Latitude & Longitude (NAD 83): 27.817425, -97.453589

Project Description: The applicant proposes to construct a floating dock to accommodate a 70-foot fireboat and Port Police marine units. The project includes dredging of approximately 53,600 cubic yards (cy) of new work material to a depth of -18 feet mean lower low water (MLLW) (+2 feet over-dredge) in an approximate 3.2 acre area. The applicant is requesting 10 years of maintenance dredging of an estimated 6,000 cy of material. The request would include three maintenance dredge events done as needed in the 10-year period. Proposed construction includes a ±250-foot by 12-foot foam filled concrete floating dock with twelve (12) 30-inch by 80-foot steel piles with high density polyethylene sleeves and twelve (12) 30-inch by 80-foot steel breasting monopiles with fenders. The proposed pile sizes may be smaller but will not exceed 30-inch by 80-foot. Construction also includes a ±75-foot by 12-foot gangway with a concrete platform. Proposed shoreline stabilization includes approximately 322 feet (linear) of new articulated concrete block revetment or concrete/rubble rip rap. The applicant will place shoreline stabilization from an elevation of -6 feet MLLW to an elevation of +8 feet MLLW at a slope that varies from 2:1 to 3:1. The footprint of the shoreline stabilization may be smaller but will not exceed the limits of -6 feet MLLW to +8 feet MLLW. Placement of approximately 275 cy of fill will occur below high tide line (HTL). Material placement will occur at authorized Dredge Material Placement Areas (DMPAs); Suntide, Tule Lake Cells A, B & C, South Shore Cells A & B, Herbie Maurer, DMPA No. 1, Rincon, Good Hope, or DMPA's 13 and 14.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2008-00486. 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. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1285-F1

Applicant: Port of Houston Authority

Location: The project site is located in the Buffalo Bayou portion of the Houston Ship Channel, along 37 wharves, the turning basin and two wharves in the Manchester area, in Houston, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.733986, -95.277391

Project Description: The applicant proposes to amend the existing permit by deepening 37 wharves around the Buffalo Bayou/Houston Ship Channel, turning basin and two wharves in the Manchester Wharf area to a depth of 41.5 feet below mean lower low water (MLLW), plus 2 feet of advanced maintenance, and 1 foot of over dredge for a total of 44.5 feet below MLLW in the currently permitted areas. The applicant also proposes to add existing dredged material disposal areas

to the existing permit and extend the authorized maintenance dredging period for 10 years.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2005-01296. 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. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1290-F1

Applicant: Enterprise Products Operating LLC

Location: The project site is located in the Neches River, at the Beaumont Marine West Terminal, near Beaumont, in Jefferson County, Texas.

Latitude & Longitude (NAD 83): 30.033500, -94.033794

Project Description: The applicant proposes to modify Department of the Army Permit SWG-2000-02956 by adding the method of silt blade dredging for maintenance dredging at each dock at the Beaumont Marine West Terminal and to add the following Dredge Material Placement Areas: Adloy, Bertron, East-West Jones, HMS 850, Jacinto Port, and Texas Terminals. An approximately 32.4-acre area of the Neches River is proposed to be dredged by silt blade dredging to previously authorized depths, which is -40 feet below mean lower low water with a 2-foot overdredge.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2000-02956. 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. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1300-F1

Applicant: Texas International Terminals LTD (TXIT)

Location: The dredge project is located in the existing TXIT Berth along the Galveston Ship Channel, at 4800 Port Industrial Road, in Galveston, Galveston County, Texas. The Galveston Ocean Dredge Material Disposal Site (ODMDS) is located approximately 3.7 nautical miles offshore Galveston, Texas.

Latitude & Longitude (NAD 83): 29.307877, -94.822815

The ODMDS vertex coordinates are located at:

Vertices	Latitude	Longitude
N	29.30024	-94.65853
E	29.26524	-94.61852
S	29.24024	-94.64519
W	29.28191	-94.69186

Project Description: The applicant is requesting authorization to maintenance dredge the existing TXIT Berth to maintain authorized depths of -45 feet mean lower low water (MLLW) with a 2-foot overdredge and dispose of the dredged material in the ODMDS located approximately 3.7 nautical miles offshore Galveston, Texas. Based on sedimentation studies, TXIT estimates approximately 200,000 cubic yards of maintenance dredge material will be dredged annually.

TXIT plans to utilize hydraulic suction and mechanical dredging for the proposed maintenance dredge activities within the Project area. Other dredging methods considered for the Project include hopper dredging. Although not the preferred alternative at this time, hopper dredging is a dredging method that may be used in the future if deemed most feasible by TXIT. Hopper dredging would utilize a hopper barge with an attached trailing drag head to dredge the material directly from the subsurface into the hopper barge.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2012-00602. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1301-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-202202048
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: May 26, 2022

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Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 23, 2022 to May 26, 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 web site. The notice was published on the web site on Friday, June 3, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, July 3, 2022.

FEDERAL AGENCY ACTIONS:

Applicant: Pelican Island Storage Terminal

Location: The project site is located in Galveston Ship Channel, at 1111 GTI Boulevard, on Pelican Island, in Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.311850, 94.807346

Project Description: The applicant proposes to install five, low-velocity blower units and associated catwalks, approximately 0.01-acre of open water area.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2021-00727. 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. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1282-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-202202086
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: May 31, 2022

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Golden Crescent Workforce Development Board

2022 Workforce Operator and Management Request for Proposals

GCWDB is soliciting proposals from qualified and eligible independent entities for the operation and management of the eight workforce centers in the Golden Crescent workforce development region, which consists of seven counties. The GCWDB expects to enter into a contractual relationship with a single contractor for the operation and management of its workforce centers as a result of a successful RFP. Faxes and e-mail delivery of proposals are not accepted. Procurement schedule is as follows:

Letter of Intent to Bid Deadline: 5:00 p.m. CST, June 6, 2022

Deadline for Submission of Questions: 4:00 p.m. CST, June 15, 2022

Question and Answer/Response Release: June 22, 2022

Response Deadline: 5:00 p.m. CST, July 11, 2022

Evaluation of Proposals: July 15, 2022 - 12:00 p.m. CST August 15, 2022

GCWDB Meeting/Proposal Action: 4:00 p.m. CST, August 25, 2022

Pre-Award Audit & Negotiations: August 26 - September 8, 2022

Transition Period, if required: September 8 - September 30, 2022

Contract Year One FY 2023: October 1, 2022 - September 30, 2023

Renewals for FY 2024-2026, contingent upon performance and availability of funds

RFP can be found on the Boards website: www.gcworkforce.org/doing-business-with-us

TRD-202202073
Henry Guajardo
Executive Director
Golden Crescent Workforce Development Board
Filed: May 27, 2022

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Texas Health and Human Services Commission

Public Notice - Adult Mental Health §1915(i) Home and Community-based Services (HCBS)

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the state plan application for the Adult Mental Health §1915(i) Home and Community-based Services (HCBS) State Plan benefit. CMS has approved the benefit through August 31, 2025. The proposed effective date for the amendment is August 31, 2022. There is not a fiscal impact to the Medicaid State Plan.

To ensure continuity of care for Texas Medicaid clients during the COVID-19 pandemic, the Health and Human Service Commission (HHSC) authorized the use of telemedicine, telehealth, and audio-only platforms to deliver a range of services. House Bill (HB) 4 (87th Legislative Session, 2021) requires HHSC to expand services eligible to be delivered via telemedicine, telehealth or other teleservice in any program, benefit, or service HHSC determines to be cost-effective and clinically effective. It also requires HHSC to authorize the use of audio-only delivery of behavioral health services determined by HHSC to be cost-effective and clinically effective and authorizes HHSC to implement audio-only benefits in any program or services if determined by HHSC to be clinically effective and cost-effective.

The 1915(i) State Plan Amendment (SPA) for Home and Community-Based Services Adult Mental Health (HCBS-AMH) includes two service descriptions which speak to face to face service delivery. HHSC is requesting these services, which are Community Psychiatric Supports and Treatment and Psychosocial Rehabilitation, continue with telemedicine, telehealth, and audio only service delivery through amending the SPA. In addition to continued flexibilities for these services, HHSC is also requesting an amendment to the face-to-face assessment section by including additional language to ensure program compliance with 42 CFR 441.720(a)(1)(i).

To obtain a free copy of the proposed request to amend the State plan, ask questions, obtain additional information, or submit comments about the amendment, please contact Shaneqwea James by U.S. mail, telephone, fax, or email at the addresses and numbers below. Comments about the proposed waiver amendment request must be submitted to HHSC by **July 11th, 2022.**

U.S. Mail

Texas Health and Human Services Commission, Attention: Shaneqwea James, State Plan Coordinator/Tribal Liaison

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711

Telephone

(512) 438-2264

Fax

(512) 323-1905 Attention: Shaneqwea James

Email

Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us.

TRD-202202085
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 31, 2022

♦ ♦ ♦

Public Notice Home and Community based Services (HCS) Program Amendment

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Home and Community based Services (HCS) Program. HHSC administers the HCS Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the HCS waiver application through August 31, 2023. The proposed effective date for this amendment is November 1, 2022.

This amendment request proposes to make the following changes:

Appendix D

HHSC is expanding the minimum qualifications for the Local Intellectual and Developmental Disabilities (LIDDA) service coordinators to allow for a broader group of persons to be qualified as a service coordinator as described below:

Currently, the HCS waiver application requires a service coordinator to have:

(1) a bachelor's or advanced degree from an accredited college in a social, behavioral or human service field; or

(2) a high school diploma or an equivalent certificate and:

(A) two years of paid experience as a case manager in a state or federally funded Parent Case Management Program or have graduated from Partners in Policy Making; and

(B) personal experience as an immediate family member of an individual with an intellectual disability.

HHSC is requesting that the qualifications be changed to allow a service coordinator to have:

(1) a bachelor's or advanced degree from an accredited college in any field;

(2) an associate degree in a social, behavioral, human service, or health-related field including, but not limited to, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, and criminal justice; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities.

Appendix I

HHSC made changes to provisions related to Electronic Visit Verification (EVV) as follows:

Added language to clarify that EVV compliance reviews are being conducted.

Clarified language that EVV has been implemented.

Added language that Financial Management Services Agencies (FMSAs) must comply with EVV requirements and policies.

Included a statement that HHSC EVV Operations conducts EVV compliance reviews.

Added language that program providers and FMSAs who fail to comply with EVV requirements and policies may be subject to progressive enforcement action based on the number of occurrences of non-compliance within a 24-month period or a temporary hold of Medicaid claims payments.

Added language to reflect current policy that the LIDDA, at its discretion, may require additional education and experience for service coordinators.

Miscellaneous

HHSC carried forward from the HCS August 31st, 2022 amendment the following changes related to the discontinuation of day habilitation and the implementation of individualized skills and socialization:

A transition plan to address the discontinuation of day habilitation during waiver year 5 and the implementation of individualized skills and socialization, a new service, to comply with the Home and Community-Based Services (HCBS) settings requirements.

The individualized skills and socialization service and the service provider qualifications for the service.

Removal of the following language from the service scope for day habilitation - "Day habilitation does not include services funded under section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.)."

HHSC changed the term "HHSC Rate Analysis" to "HHSC Provider Finance Department" and provided clarifying language for the individualized skills and socialization services projected costs.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes, in the home of a family member, or another community setting such as a three-person or four-person residence operated by an HCS program provider. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the HCS waiver program include day habilitation, respite, supported employment, adaptive aids, audiology, occupational therapy, physical therapy, prescribed drugs, speech and language pathology, financial management services, support consultation, behavioral support, cognitive rehabilitation therapy, dental treatment, dietary services, employment assistance, minor home modifications, nursing, residential assistance, social work, supporting home living, and transition assistance services.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers

Comments about the proposed waiver amendment must be submitted to HHSC by July 11, 2022.

The HHSC local offices of social services will post this notice for 30 days.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Basundhara Raychaudhuri, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202202090
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 31, 2022

♦ ♦ ♦

Public Waiver - TxHmL Waiver Amendment

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Texas Home Living Program. HHSC administers the TxHmL Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the TxHmL waiver application through February 28, 2027. The proposed effective date for this amendment is November 1, 2022.

This amendment request proposes to make the following changes:

Appendix C

HHSC clarified that supported employment is not available to individuals under a program funded under Section 110 of the Rehabilitation Act of 1973. HHSC added individualized skills and socialization as well as the service provider qualifications for the service.

Appendix D

HHSC is expanding the minimum qualifications for the Local Intellectual and Developmental Disabilities (LIDDA) service coordinators to allow for a broader group of persons to be qualified as a service coordinator as described below:

Currently, the TxHmL waiver application requires a service coordinator to have:

(1) a bachelor's or advanced degree from an accredited college in a social, behavioral or human service field; or

(2) a high school diploma or an equivalent certificate and:

(A) two years of paid experience as a case manager in a state or federally funded Parent Case Management Program or have graduated from Partners in Policy Making; and

(B) personal experience as an immediate family member of an individual with an intellectual disability.

HHSC is requesting that the qualifications be changed to allow a service coordinator to have:

(1) a bachelor's or advanced degree from an accredited college in any field;

(2) an associate degree in a social, behavioral, human service, or health-related field including, but not limited to, psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human development, gerontology, educational psychology, education, and criminal justice; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and two years of paid or unpaid experience with individuals with intellectual or developmental disabilities.

Appendix I

HHSC made changes to provisions related to Electronic Visit Verification (EVV) as follows:

Added language to clarify that EVV compliance reviews are being conducted.

Added language that Financial Management Services Agencies (FMSAs) must comply with EVV requirements and policies.

Included a statement that HHSC EVV Operations conducts EVV compliance reviews.

Added language that program providers and FMSAs who fail to comply with EVV requirements and policies may be subject to progressive enforcement action based on the number of occurrences of non-compliance within a 24-month period or a temporary hold of Medicaid claims payments.

Added language to reflect current policy that the LIDDA, at its discretion, may require additional education and experience for service coordinators.

Main Appendix /Miscellaneous

HHSC added individualized skills and socialization as a new service to be provided in the TxHmL Program, as well as the service provider qualifications and an explanation that an individual may receive the new service through the consumer-directed services option. HHSC also added individualized skills and socialization to the participant-directed services and waiver service coverage charts and added projections for the new service under Appendix E and appendix J for waiver years 1 through 5. HHSC also updated the day habilitation projections for waiver years 1 through 5.

Added a transition plan to address the discontinuation of day habilitation during waiver year 2 and the implementation of individualized skills and socialization to comply with the Home and Community-Based Services (HCBS) settings requirements.

The TxHmL waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes or in the home of another person, such as a family member. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Services in the TxHmL waiver program are day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, minor home modifications, audiology services, behavioral support, community support, dental treatment, dietary services, employment assistance, occupational therapy services, physical therapy services, nursing, speech-language pathology services, and individualized skills and socialization.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy

of the proposed waiver amendment may also be obtained online on the HHSC website at:

https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers

Comments about the proposed waiver amendment must be submitted to HHSC by July 11, 2022.

The HHSC local offices will post this notice for 30 days.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Basundhara Raychaudhuri, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202202089
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 31, 2022

♦ ♦ ♦

Texas Higher Education Coordinating Board

Vista College Students 30-Day Notice to Make Claim for Unearned Tuition and Fees

May 20, 2022

Board of Nursing

Pharmacy Board

Texas Department of Licensing and Registration

Texas Veterans Commission

Texas Workforce Commission

To Whom It May Concern,

The Texas Higher Education Coordinating Board (THECB) is required to ensure Certificate of Authorization institutions maintain reserves, lines of credit, or surety instruments sufficient to allow the institution or person to fulfill its educational **obligations of the current term** to its enrolled students if the institution is unable to continue to provide instruction to its enrolled students.

Vista College closed all campuses on October 8, 2021. If you have been contacted by a former Vista College student seeking reimbursement for obligations of the term in session on October 8, 2021, please refer the student to Dr. Paul Shuler (paul.shuler@highered.texas.gov) at THECB. The student will need to contact THECB within the next 30 days. Thank you for your attention to this matter.

Sincerely,

Tina Jackson

Assistant Commissioner

Workforce Education

TRD-202202091
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: June 1, 2022

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Texas Department of Insurance

Company Licensing

Application for DSM USA Insurance Company, Inc., a foreign life, accident and/or health company, to change its name to DentaQuest National Insurance Company, Inc. The home office is in Boston, Massachusetts.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202202096
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: June 1, 2022

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed amendments to 28 TAC §132.17 in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3036). Due to errors by the Texas Register, the text for subsection (b) and subsection (g) of the rule was published incorrectly.

The text for subsection (b) should read as follows:

(b) To conduct its investigation, the insurance [~~The~~] carrier has [~~shall have~~] 60 days from the date it was notified [~~notification~~] of the death or [~~from notice of the~~] injury that resulted in the death, whichever date is later [~~(whichever is greater) to conduct its investigation.~~].

The text for subsection (g) should read as follows:

(g) [~~(f)~~] If the insurance carrier believes the claimant beneficiary is eligible to receive death benefits, it must [~~the carrier shall~~] begin paying [~~payment of~~] death benefits. If the insurance carrier believes that the claimant beneficiary is not eligible to receive death benefits, it must [~~the carrier shall~~] file the notice of dispute [~~of eligibility (notice of dispute)~~] in the form and manner required by §124.2 of this title [~~(relating to Carrier Reporting and Notification Requirements)~~].

The text for subsection (g)(1)(B) should read as follows:

(B) final adjudication of the insurance carrier's denial of compensability or liability under §124.2 of this title and subsection (c) [~~(b)~~] of this section; or

TRD-202202083

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Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

The City of Belton Parks and Recreation Department has applied for a sand and gravel General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb up to 871 cubic yards of sedimentary material within the Leon River in Bell County. The purpose is to construct a river recreation pier and access site on the Leon River in Heritage Park. The location is approximately 1.43 miles downstream of the N. Main Street crossing and 0.6 miles upstream of the Charter Oak Drive crossing. Notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on Friday, July 8, 2022. The public comment hearing will be conducted through remote participation. Potential attendees should contact Tom Heger at (512) 389-4583 or at *tom.heger@tpwd.texas.gov* for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail *tom.heger@tpwd.texas.gov.*

TRD-202202084
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: May 31, 2022

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Public Utility Commission of Texas

Notice of Application to Connect a Portion of System with the Electric Reliability Council of Texas

Notice is given to the public of an application by the City of Lubbock through Lubbock Power and Light (Lubbock) filed with the Public Utility Commission of Texas (commission) on September 1, 2017, under Public Utility Regulatory Act §§14.001, 35.004(d), and 39.151(d).

Docket Style and Number: Application of the City of Lubbock, Acting by and through Lubbock Power & Light, for Authority to Connect the Remaining Portion of its Load with the Electric Reliability Council of Texas and for Approval of Settlement Agreement, Docket Number 53529.

The Application: Lubbock filed an application for authority to connect the remaining portion of its load with the Electric Reliability Council of Texas (ERCOT) and for approval of settlement agreement. Lubbock requests the Commission: (1) to authorize Lubbock's proposed interconnection of the remaining load to ERCOT and disconnection from the Southwest Power Pool on June 1, 2023, and to find it is in the public interest; and (2) to approve the settlement agreement with Southwestern Public Service Company and to find it is in the public interest.

Persons wishing to intervene or 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 (888) 782-8477. The deadline for intervention in this proceeding is April 11, 2022. 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 53529.

TRD-202202092
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: June 1, 2022

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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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