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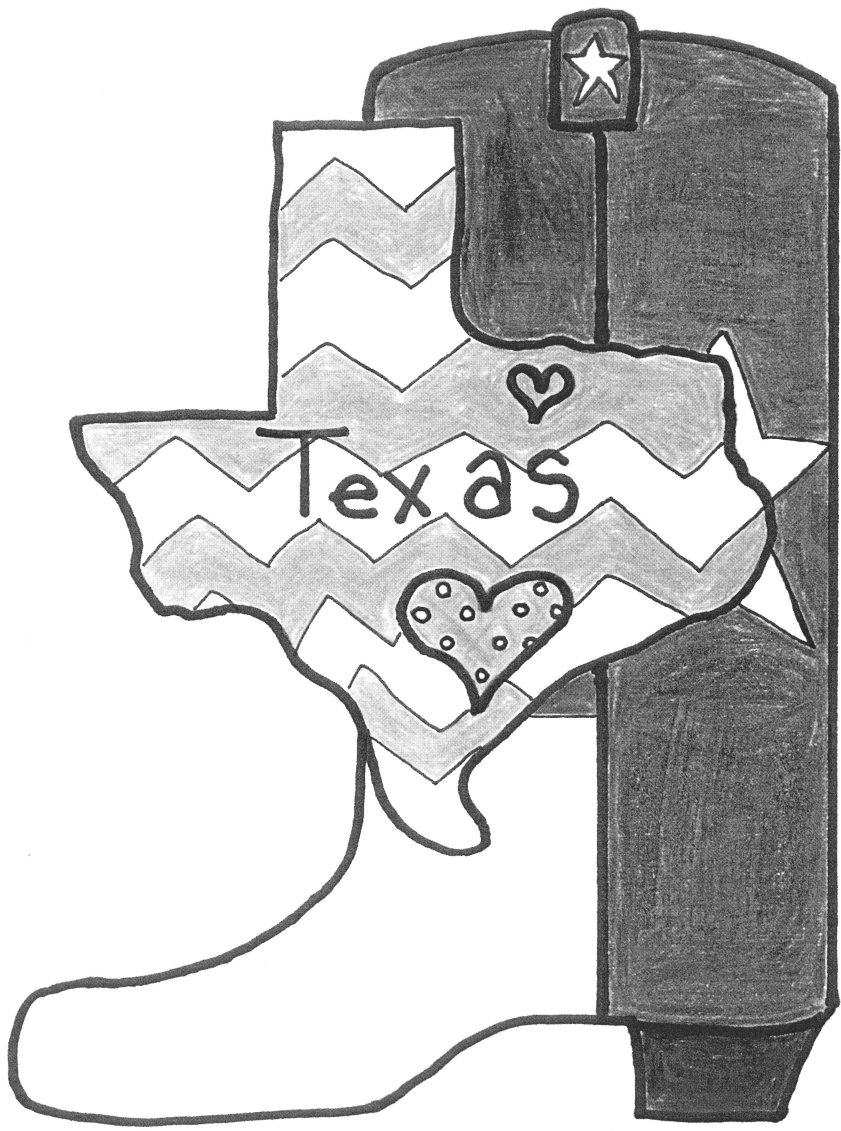
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THE GOVERNOR

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

Proclamation 41-3917

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties, and for all state agencies affected by this disaster; and

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of July, 2022.

Greg Abbott, Governor

TRD-202202769



Proclamation 41-3918

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 21st day of July, 2022.

Greg Abbott, Governor

TRD-202202770



Proclamation 41-3919

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on March 18, 2022, as amended and renewed in a number of subsequent proclamations, certifying that wildfires that began on February 23, 2022, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in Andrews, Aransas, Archer, Bee, Bell, Blanco, Borden, Bosque, Brewster, Brooks, Brown, Cameron, Coke, Coleman, Comanche, Concho, Cooke, Crane, Crockett, Culberson, Dawson, Dimmit, Duval, Eastland, Ector, Edwards, Erath, Gaines, Garza, Grayson, Hemphill, Hidalgo, Hood, Howard, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kleberg, Live Oak, Martin, Mason, Maverick, McCulloch, Medina, Menard, Midland, Nueces, Palo Pinto, Parker, Pecos, Potter, Presidio, Randall, Reagan, Real, Refugio, Roberts, Runnels, Starr, Taylor, Terrell, Tom Green, Upton, Wichita, Willacy, Williamson, Winkler, Wise, Zapata, and Zavala counties; and

WHEREAS, those same conditions continue to exist in these counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in these additional counties: Colorado, Coryell, Denton, Freestone, Gonzales, Henderson, Jones, Kaufman, Somervell, and Stephens.

Pursuant to Section 418.017 of the code, 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 of the code, 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.

Pursuant to 49 C.F.R. Section 390.23 and Chapter 644 of the Texas Transportation Code, I hereby declare a regional emergency due to these wildfires that justifies an exemption from the hours-of-service regulations in 49 C.F.R. Section 395.3 for motor carriers hauling flame-retardant materials or otherwise supporting firefighters to assist disaster relief in Texas.

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 22nd day of July, 2022.

Greg Abbott, Governor

TRD-202202819



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0469-KP

Requestor:

The Honorable James M. Tirey

Hale County Attorney

500 Broadway, Suite 340

Plainview, Texas 79072

Re: Whether the city's employment of an attorney who is the son-in-law of the city manager constitutes a conflict of interest under chapter 176 of the Local Government Code or the Texas Disciplinary Rules of Professional Conduct (RQ-0469-KP)

Briefs requested by August 19, 2022

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

TRD-202202798

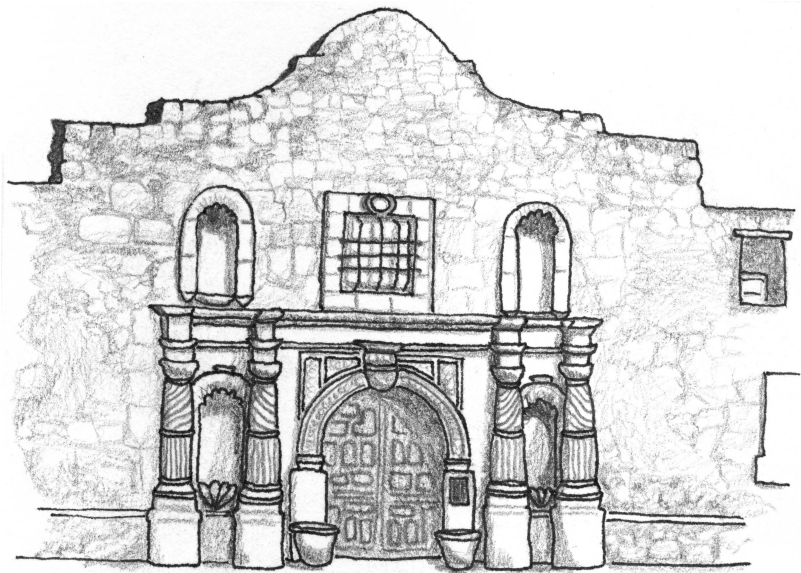
Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: July 26, 2022





EMERGENCY RULES

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

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY

HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 500, COVID-19 Emergency Health Care Facility Licensing, new §500.4, concerning an emergency rule in response to COVID-19 in order to permit a licensed hospital to participate in the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home Program to expand hospital capacity in response to the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's July 29, 2021, proclamation relating to the continued response to the COVID-19 disaster. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic.

To protect hospital patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to temporarily permit a currently licensed hospital to participate in the CMS hospitals at home program to expand hospital capacity in response to the COVID-19 pandemic.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. Texas Government Code §2001.034 autho-

izes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §241.026 authorizes the Executive Commissioner of HHSC to adopt rules governing development, establishment, and enforcement standards for the construction, maintenance, and operation of licensed hospitals.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §241.026.

§500.4. Participating in the Centers for Medicare and Medicaid Services Acute Hospital Care at Home Program During the COVID-19 Pandemic.

(a) Notwithstanding hospital functions and services requirements at 25 TAC §133.41 (relating to Hospital Functions and Services) and hospital physical plant and construction requirements at 25 TAC §§133.161 - 133.169 (relating to Physical Plant and Construction Requirements), a hospital may treat an eligible patient at that patient's residence as part of the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home program if the hospital:

(1) obtains CMS approval to participate in the Acute Hospital Care at Home program;

(2) submits an application as specified by the Texas Health and Human Services Commission (HHSC) via email at info-hffc@hhs.texas.gov to participate in the Acute Hospital Care at Home program;

(3) provides a copy of the CMS approval and any additional information HHSC requires in its review of the request; and

(4) receives written approval from HHSC to participate in the CMS Acute Hospital Care at Home program.

(b) At any time HHSC may withdraw its approval for a hospital to participate in the CMS Acute Hospital Care at Home program. Any patient being treated under the program at the time approval is withdrawn shall be safely relocated as soon as practicable according to the hospital's policies and procedures.

(c) A hospital that participates in the CMS Acute Hospital Care at Home program shall comply with the CMS program requirements and with all other applicable statutes and regulations.

(d) To the extent this section may conflict with a requirement of 25 TAC §133.21(c)(4)(B) - (C) (relating to General), this section controls.

(e) The hospital shall develop, implement, and enforce policies and procedures to ensure the safety of a patient's residence when participating in the CMS Acute Hospital Care at Home program.

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

Filed with the Office of the Secretary of State on July 25, 2022.

TRD-202202792

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: August 2, 2022

Expiration date: November 29, 2022

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



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 25. SCHOOL HEALTH AND RELATED SERVICES

1 TAC §354.1341, §354.1342

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation.

BACKGROUND AND PURPOSE

The School Health and Related Services (SHARS) program is jointly administered by HHSC and the Texas Education Agency (TEA). The SHARS program allows independent school districts and public charter schools to obtain Medicaid reimbursement for the provision of certain direct medical and transportation services to Medicaid enrolled students who receive benefits to meet federal and state laws guaranteeing the students a free and appropriate public education. Currently SHARS must be prescribed in a student's individualized education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at Title 19 Texas Administrative Code (TAC) §89.1001.

The proposed rule amendment to §354.1341 adds text to align with the implementation of House Bill (H.B.) 706, 86th Legislature, Regular Session, 2019. H.B. 706 amended the Texas Education Code to permit SHARS providers to bill and receive reimbursement for allowable audiology services provided to Medicaid-eligible children as prescribed in a plan created under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). H.B. 706 requires HHSC to adopt rules necessary to implement Texas Education Code Section 38.033 (redesignated as Section 38.034 by H.B. 3607, 87th Legislature, Regular Session, 2021) in consultation with the Texas Education Association and as approved by the Centers for Medicare and Medicaid Services.

The proposed amendment to §354.1342 implements H.B. 2658, 87th Legislature, Regular Session, 2021, effective September 1, 2021. H.B. 2658 added Human Resources Code §32.0317. The proposed amendment will restate and clarify the federal requirement to obtain parental consent to access a student's Medicaid

in order to receive Medicaid reimbursement for all SHARS services.

HHSC is also proposing language to align these rules with 1 TAC §355.8443, concerning Reimbursement Methodology for School Health and Related Services (SHARS), and other clarifying language.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.1341 adds subsection (c) to require SHARS audiology services to be prescribed either in an IEP or in a written Section 504 Plan. The proposed amendment reformats the rule because of the addition of new subsection (c) and makes minor editorial changes.

The proposed amendment to §354.1342 adds a reference to §354.1341 and adds language in paragraphs (1)(B) and (C) to permit school districts to claim for SHARS audiology services prescribed in either an IEP or Section 504 Plan, as required by proposed §354.1341(c). The proposed amendment replaces "school district" with "Local Education Agency (LEA)" to align with 1 TAC §355.8443.

The proposed amendment to §354.1342 also combines current paragraphs (3) and (4) into paragraph (3) and clarifies that LEAs must abide by the rules and regulations of both HHSC and TEA. The proposed amendment adds new paragraph (4) outlining training requirements for LEAs. The proposed amendment moves the requirement to comply with all applicable federal, state, and local laws and regulations regarding the services provided from paragraph (5) to new paragraph (12) and replaces the language in paragraph (5) with the requirement to comply with federal parental consent and notification requirements for accessing a student's Medicaid to pay for SHARS.

The proposed amendment to §354.1342 also reformats the rule as necessary and makes minor editorial changes.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed 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 require an increase in fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand the existing rules;
- (7) the proposed rules will not increase the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed rules because participation in the program is optional and is only offered within the school setting.

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 and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be that LEAs will now be able to obtain reimbursement through the SHARS program for audiology services delivered to students under a Section 504 Plan. LEAs will receive some federal funds for those services which will save them money. Audiology services are already being provided to students under Section 504 Plans in the school setting, but the services are not reimbursable through the SHARS program.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because participation in the SHARS program is optional.

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 HEARING

A public hearing is scheduled for August 22, 2022 at 1:00 p.m. and will be held by HHSC via webinar. Persons who wish to attend may register by using this link: <https://attendee.gotowebinar.com/register/6571640685000375054>. American Sign Language (ASL) interpretation will be provided. Persons requiring further information, special assistance, or accommodations aside from ASL interpretation should contact the Medical and Dental Benefits Policy box at MedicaidBenefitRequest@hhsc.state.tx.us or Jennifer Daniels at (512) 438-2935.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to SHARS staff in HHSC's Medicaid and CHIP Services Department at (512) 438-2935.

Written comments on the proposal may be submitted to Office of Policy, Medicaid and CHIP Services at 701 West 51st Street, Mail Code H310, Austin, Texas 78751 or via email at Medicaid-BenefitRequest@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 22R093" 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 authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The amendments are specifically authorized by Texas Education Code §38.034 and Human Resources Code §32.0317.

§354.1341. *Benefits and Limitations.*

(a) Subject to the specifications, conditions, limitations, and requirements established by HHSC [the Texas Health and Human Service Commission (Commission)], school health and related services (SHARS) are those Medicaid [health and related] services that are determined to be medically necessary and reasonable to ensure a Medicaid-enrolled student, 20 years of age or younger with a disability, [20 years of age or younger] receives the benefits accorded to the student [him or her] by federal and state legislation guaranteeing a free and appropriate public education.

(b) SHARS must be prescribed in the student's approved individualized [individual] education program (IEP) as required by the Texas Education Code, §29.001(7), and implemented through Commissioner of Education rule at 19 TAC §89.1001 (relating to the Scope and Availability).

(c) SHARS audiology services must be prescribed in an IEP as described in subsection (b) of this section or in a written Section 504 Plan as required by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).

(d) [(e)] SHARS must [are to] be delivered in the least restrictive environment consistent with the nature of the specific service(s) and the physical and mental condition of the student.

(e) [(d)] SHARS [may] include[, but are not necessarily limited to]:

(1) audiology, individual and group delivered by licensed/certified therapist or licensed/certified assistant;

(2) counseling, individual and group delivered by licensed/certified therapist;

- (3) physician services;
- (4) occupational therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;
- (5) physical therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;
- (6) psychological services;
- (7) speech therapy, individual and group delivered by licensed/certified therapist or licensed/certified assistant;
- (8) nursing services, including medication administration and nursing services delegated by a registered nurse (RN) (in compliance with RN delegated nursing tasks criteria as determined by the Texas Board of Nursing) to an employee or health aide;
- (9) special transportation services; and
- (10) personal care services.

§354.1342. Conditions for Participation.

To claim for school health and related services (SHARS) as described in §354.1341 of this division (relating to Benefits and Limitations), Local Education Agencies (LEAs) [provided to Medicaid-enrolled students eligible for services provided under the Individuals with Disabilities Education Act (IDEA), school districts] must:

- (1) ensure that services are provided in a manner and environment consistent with:
 - (A) the student's physical and mental condition;
 - (B) the overall goals and objectives of the student's individualized [individual] education program (IEP) or Section 504 Plan; and
 - (C) other services and schedules prescribed in the student's IEP or Section 504 Plan;
- (2) ensure that services are provided by persons licensed, accredited, or certified by the appropriate federal or state agency or recognized professional organization to deliver the specific service(s);
- [(3) meet Texas Education Agency (TEA) standards for the delivery of SHARS;]
- (3) [(4)] abide by the rules and regulations of the Texas Education Agency and HHSC [TEA] related to service delivery, record-keeping, documentation, client confidentiality, and access to client records by other professionals involved in the implementation of the student's IEP or Section 504 Plan;
- (4) ensure that applicable staff complete SHARS trainings as directed by HHSC:
 - (A) Time study and SHARS programmatic training are required for LEA administrative staff and recommended for direct service staff in their first year of participation;
 - (B) SHARS cost report training is required by each primary SHARS financial contact;
 - (C) Required training(s) must be completed each federal fiscal year and is not retroactive to previous federal fiscal years;
- (5) comply with parental consent and notification requirements in 34 CFR §300.154 before accessing a student's Medicaid to pay for SHARS prescribed in the student's Section 504 Plan or IEP;
- [(5) comply with all applicable federal, state, and local laws and regulations regarding the services provided;]

(6) be enrolled and approved for participation in the Texas Medical Assistance Program (Medicaid);

(7) sign a written [provider] agreement with HHSC [the Texas Health and Human Services Commission (the Commission)] or its designee agreeing to comply with the terms of the agreement and all requirements of Medicaid, including regulations, rules, handbooks, standards, and guidelines published by HHSC [the Commission] or its designee;

(8) comply with §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS));

[(8) bill for services reimbursable by Medicaid in the manner and format prescribed by the Commission or its designee, at the time services are delivered, including billing for each cost category for which the district will seek reimbursement through the annual cost report required by paragraph (11) of this section;]

(9) participate in the HHSC-administered [Commission-administered] time study;

(10) certify each quarter the Total Computable Expenditure (Total Computable Expenditure = amount paid (Federal share) + calculated State/Local share); [and]

(11) submit an annual cost report, as described in §355.8443 of this title; and [(relating to Reimbursement Methodology for School Health and Related Services (SHARS));]

(12) comply with all applicable federal, state, and local laws and regulations regarding the services provided.

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 July 25, 2022.

TRD-202202779

Karen Ray
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 438-2935



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPTIONAL EXTENDED YEAR PROGRAM

19 TAC §105.1001

The Texas Education Agency (TEA) proposes an amendment to §105.1001, concerning optional extended year programs. The proposed amendment would implement House Bill (HB) 3, 86th Texas Legislature, 2019, by removing an outdated provision related to the school finance system.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §29.082, authorizes the commissioner of education to adopt rules for the administration of an extended year program provided by school districts and open-enrollment charter schools for certain eligible students.

The proposed amendment would eliminate subsection (f), which references Option 4 wealth equalization agreements under TEC, Chapter 41. Because of changes to the school finance system by HB 3, 86th Texas Legislature, 2019, districts no longer exercise Option 4 agreements. Removing the outdated provision would align the rule with current practice and eliminate concerns of duplicate funding.

FISCAL IMPACT: Kristen Hole, associate commissioner for instructional strategy, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by removing an outdated provision.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Hole has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to ensure rule language is based on current law and provide school districts with clarifications by removing outdated provisions in alignment with HB 3, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not

require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins August 5, 2022, and ends September 5, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 5, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §29.082, which authorizes an optional extended year program to allow a school district to apply to the Texas Education Agency for funding of an extended year program for a period not to exceed 30 instructional days for students in Kindergarten-Grade 11 who are identified as likely not to be promoted to the next grade level for the succeeding school year or for students in Grade 12 who are identified as likely not to graduate from high school before the beginning of the succeeding school year. TEC, §29.082(b), authorizes the commissioner of education to adopt rules for the administration of an optional extended year program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.082.

§105.1001. Optional Extended Year Program.

(a) Each school district seeking funding for an optional extended year program under the Texas Education Code, §29.082, must submit an application in a format prescribed by the commissioner of education. Once funded, the program shall comply with the provisions of the Texas Education Code, §29.082.

(b) An optional extended year program may extend the day, the week, or the year to provide additional support and instruction for eligible students. The program shall be conducted beyond the required instructional days, which may include intercessions for year-round programs.

(c) A student is eligible for services in accordance with the Texas Education Code, §29.082(a)(1)-(2). A student who does not demonstrate proficiency in a subject area as determined by the district is also eligible for services.

(d) School districts shall be funded annually based on the most recent district data available to the Texas Education Agency through the Public Education Information Management System (PEIMS). Funding shall be based on the following:

(1) Eligibility. School districts in which at least 40% of the students in Kindergarten through Grade 12 are from economically disadvantaged families will be eligible for funding.

(2) Maximum entitlement. Funding for an eligible school district under this section shall be based on the amount necessary to provide extended year instructional services to at least 5.0% of the at-risk student population in Kindergarten through Grade 12.

(3) Per capita amount. The per capita amount will be determined by dividing the total program allocation by the sum of the maximum entitlement populations in Kindergarten through Grade 12 in eligible school districts.

(4) Reallocation. Program funds not requested by eligible school districts will be reallocated to school districts identified in paragraph (1) of this subsection that requested funding.

(e) At a minimum, school districts will be required to provide services to the number of students identified on the school district's entitlement notice used for funding. School districts that have fewer students participating in the optional extended year program than identified for calculating the school district's maximum entitlement (including reallocation, if applicable) will have their entitlement reduced on a per-capita basis.

~~(f) A school district receiving funds under the Texas Education Code, §29.082, that is also receiving funds for an optional extended year program for students in Kindergarten through Grade 12 under the Option 4 wealth equalization agreement authorized under the Texas Education Code, Chapter 41, must adjust its Option 4 equalization agreement. The district must adjust the agreement to redirect the use of funds to a qualifying activity other than an optional extended year program for students in Kindergarten through Grade 12 to the extent necessary to avoid duplicate funding of optional extended year programs.]~~

(f) ~~(g)~~ A school district receiving funds for the accelerated reading instruction program authorized under the Texas Education Code, §28.006(g), is eligible to use funds authorized under the Texas Education Code, §29.082, to serve students in Kindergarten through Grade 2. Each optional extended year program must have auditable funding documentation linking direct service expenditures and optional extended year program funds used to identify eligible students.

(g) ~~(h)~~ All costs under the optional extended year program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

(h) ~~(i)~~ Teacher training required under the Texas Education Code, §29.082(d), shall address the provisions set forth in this subsection. Training is to occur prior to the implementation of the program. Additional training may be provided throughout the implementation of the program. The required training shall provide teachers with the following:

(1) knowledge and skills needed to help students in the program meet challenging state content and student performance standards; and

(2) innovative instructional practices suitable for accelerating the academic performance of at-risk students.

(i) ~~(j)~~ A school district shall incorporate effective instructional strategies into the design of the program to ensure students are provided with the skills needed to be successful in the following school year. An extended day program must be implemented beyond the regular seven-hour day and may not include tutorials or extended in-school day-care services. A program with the basic design to complete homework is not an acceptable instructional design for the program. A tutorial program using pre- and post-testing with each student working on a sequenced and focused program over time to enable the student to attain greater academic success is acceptable.

(j) ~~(k)~~ A school district shall submit an annual report evaluating the program in the time and format required by the commissioner. A school district shall also submit, in a manner determined by the commissioner, a complete list of students who participated in the program for at least one day.

(k) ~~(l)~~ For audit purposes, a school district shall maintain documentation to support each of the requirements of this section.

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

Filed with the Office of the Secretary of State on July 25, 2022.

TRD-202202781

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER F. PROFESSIONAL DEVELOPMENT

22 TAC §463.35

The Texas Behavioral Health Executive Council proposes the repeal of §463.35, relating to Professional Development.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed and replaced by a new §465.35, pertaining to Requirements for Professional Development, which is formatted similarly to the other Boards under the Executive Council.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the professional development rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §501.1515 of

the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.35. *Professional Development.*

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 July 20, 2022.

TRD-202202739

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §463.35

The Texas Behavioral Health Executive Council proposes new §463.35, relating to Requirements for Professional Development.

Overview and Explanation of the Proposed Rule. This proposed new rule is intended to streamline all the continuing education into a rule formatted similarly to the other Boards under the Executive Council. Additionally, this rule adds and changes some of the requirements for each renewal cycle. For example, licensees will be able to carry forward up to ten hours from the previous cycle if they were not used, licensees can opt to take the jurisprudence examination for one hour of ethics credit, and lastly licensees can now claim up to one hour of self-study continuing education credit.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments

is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Tex. Occ. Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§465.35. Requirements for Professional Development.

(a) Minimum Professional Development Hours Required.

(1) A licensee must complete 40 hours of professional development during each renewal period that they hold a license. The 40 hours of professional development must include six (6) hours in ethics and six (6) hours in cultural diversity or competency.

(2) A licensee may carry forward to the next renewal period a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Acceptable ethics hours include, but are not limited to, professional development on:

(1) state or federal laws, including agency rules, relevant to the practice of psychology;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(c) Acceptable cultural diversity or competency hours include, but are not limited to, professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(d) Acceptable Professional Development Activities.

(1) All professional development hours must have been received during the renewal period, unless allowed under subsection (a)(2) of this section, and be directly related to the practice of psychology;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of psychology;

(3) Except for hours claimed under subsection (g) of this section, all professional development hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and

(4) Multiple instances or occurrences of a professional development activity may not be claimed for the same renewal period.

(e) Licensees must obtain at least fifty percent of their professional development hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals; or

(6) any provider approved or endorsed by a provider listed herein.

(f) Licensees shall receive credit for professional development activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the professional development activity.

(g) Licensees may claim professional development credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim one (1) hour of professional development in ethics.

(2) Preparing and giving a presentation at a professional development activity. The maximum number of hours that may be claimed for this activity is five (5) hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is five (5) hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is five (5) hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is one (1) hour.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim one (1) hour of professional development credit.

(7) The Council does not pre-evaluate or pre-approve professional development providers or hours.

(8) Licensees shall maintain proof of professional development compliance for a minimum of three (3) years after the applicable renewal period.

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 July 20, 2022.

TRD-202202740

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.304

The Texas Behavioral Health Executive Council proposes amended §781.304, relating to Relationships with Clients.

Overview and Explanation of the Proposed Rule. The proposed amendment removes duplicative language that is currently stated in §781.310, pertaining to billing and financial relationships.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.304. Relationships with Clients.

(a) A social worker shall inform in writing a prospective client about the nature of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, services provided, fees, and arrangements for payment.

(b) The social worker shall not give or receive a commission, rebate, or any other form of remuneration for referring clients. [A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional. In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage. Payment of credentialing or other fees to insurance companies or other third party payers to be part of an approved provider list shall not be considered as a violation of this chapter.]

(c) A social worker shall not enter into a business relationship with a client. This rule does not prohibit a professional social work relationship with a client, as described in this subchapter.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services,

progress or case notes and billing information for a minimum of seven years after the date of termination of services for an adult client or five years beyond the age of 18 years of age for a minor, whichever is greater.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the effectiveness of the licensee's services; the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; the type, effectiveness, qualifications, and products or services offered by an organization or agency; or the practice or field of social work.

(i) If the licensee learns that false, misleading, deceptive, fraudulent or exaggerated statements about the services, qualifications, or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims, prevent their reoccurrence, and report the incident to the Council.

(j) A licensee shall provide social work intervention only in the context of a professional relationship.

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice, providing services to clients located in the State of Texas, must be licensed in Texas and adhere to provisions of this chapter.

(l) The licensee shall not provide social work services or intervention to previous or current family members; personal friends; educational or business associates; or individuals whose welfare might be jeopardized by a dual or multiple relationship.

(m) The licensee shall not accept from or give to a client any gift with a value in excess of \$25. If the licensee's employer prohibits giving or receiving gifts, the licensee shall comply with the employer's policy.

(n) The licensee or relatives to the fourth degree of consanguinity or affinity of the licensee may not intentionally borrow or lend money or items of value to clients or relatives to the fourth degree of consanguinity or affinity of clients.

(o) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(p) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(q) A licensee shall set and maintain professional boundaries, avoiding dual or multiple relationships with clients. If a dual or multiple relationship develops, the social worker is responsible for ensuring the client is safe.

(r) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with the client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

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 July 20, 2022.

TRD-202202753

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.401

The Texas Behavioral Health Executive Council proposes amended §781.401, relating to Qualifications for Licensure.

Overview and Explanation of the Proposed Rule. The proposed amendment removes the requirements that supervised experience must be obtained within five years immediately preceding the date of application for specialty recognition.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or

amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied

with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.401. Qualifications for Licensure.

(a) Licensure. The following education and experience is required for licensure as designated. If an applicant for a license has held a substantially equivalent license in good standing in another jurisdiction for one year immediately preceding the date of application, the applicant will be deemed to have met the experience requirement under this chapter.

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited institution of higher learning acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has had 3000 hours of supervised professional clinical experience over a period of 24 to 48 months, or its equivalent if the experience was completed in another jurisdiction. Hours accrued in non-clinical settings may be used to satisfy the requirements of this rule if the applicant works at least 4 hours per week providing clinical social work as defined in §781.102 of this title (relating to Definitions).

(C) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of supervised experience, with a Council approved supervisor. If the social worker completed supervision in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification of supervision.

(D) Has passed the Clinical examination administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a master's degree in social work from a CSWE-accredited social work program, or a doctoral degree in social work from an accredited university acceptable to the Council, and has documentation in the form of a university transcript of successfully completing a field placement in social work.

(B) Has passed the Master's examination administered nationally by ASWB.

(3) Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has passed the Bachelors examination administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for Independent Non-clinical Practice specialty recognitions.

(1) Is currently licensed in the State of Texas as an LBSW or LMSW.

(2) While fully licensed as a social worker has had 3000 hours of supervised full-time social work experience over a minimum two-year period, but within a maximum five-year period or its equivalent if the experience was completed in another state. Supervised professional experience must comply with §781.404 of this title and all other applicable laws and rules.

(3) Has had a minimum of 100 hours of supervision, over the course of the 3000 hours of experience, with a Council-approved supervisor. [Supervised experience must have occurred within the 5 calendar years immediately preceding the date of application for IPR specialty recognition.] If supervision was completed in another jurisdiction, the social worker shall have the supervision verified by the regulatory authority in the other jurisdiction. If such verification is impossible, the social worker may request that the Council accept alternate verification.

(c) Applicants for a license must complete the Council's jurisprudence examination and submit proof of completion at the time of application.

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202754

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §781.405

The Texas Behavioral Health Executive Council proposes amendments to §781.405, relating to Application for Licensure.

Overview and Explanation of the Proposed Rule. This proposed amendment is made to correct a typographical error.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and,

by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board previously proposed this rule to the Executive Council. Pursuant to 22 Texas Administrative Code §881.20, the Executive Council has the authority to make non-substantive editorial changes to rules, and the sole reason for the proposed change is to correct a typographical error. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.405. Application for Licensure.

A licensure or specialty application must be submitted in accordance with Council rules ~~§882.1~~ [882.1] of this title (relating to Application Process) and ~~§882.2~~ [882.1] of this title (relating to General Application File Requirements).

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

Filed with the Office of the Secretary of State on July 21, 2022.

TRD-202202755

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §781.406

The Texas Behavioral Health Executive Council proposes amended §781.406, relating to Required Documentation of Qualifications for Licensure.

Overview and Explanation of the Proposed Rule. The proposed amendment removes the requirements that supervised experience must be obtained within five years immediately preceding the date of application.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the

rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress

Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.406. *Required Documentation of Qualifications for Licensure.*

(a) Application form. An applicant for licensure must submit a completed official application form with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts from social work educational units accredited by CSWE.

(2) Degrees for licensure as an LBSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE.

(c) Experience verification.

(1) An applicant's experience for licensure or for specialty recognition must meet the requirements of §781.401 of this title (relating to Qualifications for Licensure), §781.402 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice Recognition), and §781.404 of this title (relating to Recognition as a Council-approved Supervisor and the Supervision Process). The applicant must document the names and addresses of su-

pervisors; beginning and ending dates of supervision; job description; and average number of hours of social work activity per week. The applicant must further document the appropriate supervision plan and verification form for each practice location.

(2) The applicant's experience must have been in a position providing social work services, under the supervision of a qualified supervisor, with written evaluations to demonstrate satisfactory performance.

~~[(3) Supervised experience must have occurred within the five calendar years immediately preceding the date of an initial or upgrade application.]~~

(3) [(4)] The applicant must maintain and upon request, provide to the Council documentation of employment status, pay vouchers, or supervisory evaluations.

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 July 21, 2022.

TRD-202202756

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §781.803

The Texas Behavioral Health Executive Council proposes amendments to §781.803, relating to Severity Levels.

Overview and Explanation of the Proposed Rule. This amended rule is proposed to make the rule clearer and simplifying the guide by combining levels 2 and 3 into a suspension for any amount of time. Additionally, the maximum penalty amount for each level is raised to \$5,000 to align with Occupations Code Section 507.352.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.803. *Severity Levels.*

The following are severity levels for the schedule of sanctions.

(1) Level One--Revocation of license. These violations evidence the licensee's intentional or gross misconduct, cause or pose a high degree of harm to the public, and/or require severe punishment to deter the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a financial penalty.

(2) Level Two--Suspension[Extended suspension] of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require suspension of licensure for a period of time [not less than one year]. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 [\$4,000] for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

[(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require suspension of licensure for some period of time. The Council may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.]

(3) [(4)] Level Three [Four]--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 [\$2,000] for each Level Three

[~~Four~~] violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) [~~(5)~~] Level ~~Four~~ [~~Five~~]-Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The Council may also impose an administrative penalty of not less than \$250 or more than \$5,000 [~~\$1,000~~] for each Level ~~Four~~ [~~Five~~] violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

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

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202757

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §781.805

The Texas Behavioral Health Executive Council proposes the repeal of §781.805, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed and replaced with a new schedule of sanctions that is proposed elsewhere in the edition of the *Texas Register*.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the schedule of sanctions rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small

businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and

ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.805. Schedule of Sanctions.

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 July 21, 2022.

TRD-202202758

Darrel D. Spinks
Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §781.805

The Texas Behavioral Health Executive Council proposes new §781.805, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This new rule has been proposed to replace the current schedule of sanctions and make it easier to use. While the format of the schedule has changed the substance is the same except with regards to two other proposed rule amendments. Amendments to §781.803 are being proposed in this edition of the *Texas Register*, so corresponding amendments have been made to this new schedule of sanctions to align with those proposed changes. Additionally, proposed changes to §781.404 were published in the April 22, 2022, edition of the *Texas Register*. Proposed changes to this schedule were also published in that same edition of the *Texas Register*, but those have now been withdrawn and are re-proposed in this new rule. There are no additional substantive changes being proposed to this new schedule of sanctions when compared to the current schedule of sanctions.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhcec.texas.gov. The deadline for receipt of comments

is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.805. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §781.805

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 July 21, 2022.

TRD-202202759

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §801.2

The Texas Behavioral Health Executive Council proposes amended §801.2, relating to Definitions.

Overview and Explanation of the Proposed Rule. The proposed amendment adds a definition for direct clinical services to couples or family for the purpose of providing greater clarity in the rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed

rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.2. *Definitions.*

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

(1) Accredited institutions or programs--An institution of higher education accredited by a regionally accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

(3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.

(8) Direct clinical services to couples or family--professional services provided to couples or families in which a clinician delivers therapeutic services with two or more individuals simultaneously or two or more individuals from the same family system within the same therapeutic session. Individuals must share an ongoing relationship beyond that which occurs in the therapeutic experience itself. Examples of ongoing relationships include family systems, couple systems, enduring friendship/community support systems, and residential, treatment or situationally connected systems.

(9) [(8)] Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(10) [(9)] Executive director--the executive director for the Texas Behavioral Health Executive Council.

(11) [(10)] Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(12) [(11)] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(13) [(12)] Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(14) [(13)] Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.

(15) [(14)] License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional marriage and family therapist license, or a provisional marriage and family therapist associate license.

(16) [(15)] Licensed marriage and family therapist (LMFT)--As defined in §502.002 of the Occupations Code, a person who offers marriage and family therapy for compensation.

(17) [(16)] Licensed marriage and family therapist associate (LMFT Associate)--As defined in §502.002 of the Occupations Code, an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council. The appropriate council-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not council-approved and may not be used.

(18) [(17)] Licensee--Any person licensed by the council.

(19) [(18)] Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(20) [(19)] Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(21) [(20)] Month--A calendar month.

(22) [(21)] Person--An individual, corporation, partnership, or other legal entity.

(23) [(22)] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(24) [(23)] Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(25) [(24)] Supervision hour--50 minutes.

(26) [(25)] Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements). The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(27) [(26)] Technology-assisted services--Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(28) [(27)] Therapist--A person who holds a license issued by the council.

(29) [(28)] Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

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 July 20, 2022.

TRD-202202741

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



SUBCHAPTER B. RULES OF PRACTICE

22 TAC §801.43

The Texas Behavioral Health Executive Council proposes amended §801.43, relating to Professional Representation.

Overview and Explanation of the Proposed Rule. The proposed amendment clarifies how supervisees must represent themselves to clients and the public.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the pro-

posed rule will provide greater clarity and consistency in the Executive Council's rules, as well as require better or more specific notice to the public regarding supervisees and supervisors. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be virtually little to no additional economic costs to persons required to comply with this rule. There may be a nominal one-time economic cost for supervisees to update advisements, practice documents, and other public representations, but the current rule already requires a licensee to indicate their licensure status and this rule amendment merely requires the licensee to provide more specifics regarding their status. To help minimize any potential impacts that may be caused by any nominal one-time economic costs the proposed change to the rule is given a future implementation date of January 1, 2023.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.43. Professional Representation.

(a) A licensee is subject to and bound by provisions of the Act, the Council Act, and council rules.

(b) A licensee that becomes aware of another licensee violating state or federal law within the jurisdiction of the Council, may attempt to resolve the violation informally with the other licensee if the violation does not involve actual or likely harm to an individual or the public. Any unresolved violations must be reported to the Council. A licensee that becomes aware of another licensee violating a state or federal law within the jurisdiction of the Council involving actual or likely harm to an individual or the public, must report the violation to the Council.

(c) Licensure and Supervisory Status.

(1) When providing professional therapeutic services as defined in §801.42 of this title (relating to Professional Therapeutic

Services), a licensee must indicate his or her licensure status as an LMFT or LMFT Associate, including any probationary status or other restrictions placed on the licensee by the council.

(2) An LMFT Associate must not represent themselves as an independent practitioner. An LMFT Associate's name must be followed by a statement such as "supervised by (name of supervisor)" or a statement of similar effect, together with the name of the supervisor. This disclosure must appear on all marketing materials, billing documents, and practice related forms and documents where the LMFT Associate's name appears, including websites and intake documents. This paragraph is effective January 1, 2023.

(d) A licensee may not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including:

- (1) the effectiveness of services;
- (2) the licensee's qualifications, capabilities, background, training, education, experience, professional affiliations, fees, products, or publications; or
- (3) the practice of marriage and family therapy.

(e) A licensee may not misrepresent any agency or organization by presenting it as having attributes that it does not possess.

(f) A licensee may not encourage, or within the licensee's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the licensee.

(g) If a licensee learns of a misrepresentation, exaggerated, false, deceptive, or fraudulent claim or statement made by another, the licensee must take reasonable action to correct the misrepresentation, claim or statement.

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 July 20, 2022.

TRD-202202742

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §801.302

The Texas Behavioral Health Executive Council proposes amended §801.302, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This amended rule is proposed to make the rule clearer and to simplify the guide by combining levels 2 and 3 into a suspension for any amount of time. Additionally, the possible penalty amount for a suspension is increased to a maximum of \$5,000 to align with Occupations Code Section 507.352.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state

or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant,

Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in council rules, 22 Texas Administrative Code, §884.20 (relating to Disciplinary Guidelines and General Schedule of Sanctions).

(1) Level One--Revocation of license with a possible administrative penalty from \$500 to \$5,000. These violations evidence intentional or gross misconduct on the part of the licensee or cause or pose a high degree of harm to the public or may require severe punishment as a deterrent to the licensee, or other licensees.

(2) Level Two--~~Suspension~~[Extended suspension] of license with a possible administrative penalty from \$250 to \$5,000 [\$2,500]. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require suspension [termination] of licensure for a period of time [not less than one year].

{(3) Level Three--Moderate suspension of license with a possible administrative penalty of no more than \$250. These violations

are less serious than Level Two violations, but may require termination of licensure for a period of time that is less than a year.]

(3) [(4)] Level Three [Four]--Probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant suspension [termination] of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(4) [(5)] Level Four [Five]--Reprimand. These violations involve inadvertent or relatively minor misconduct or rule violations not directly involving the health, safety and welfare of the public.

(5) [(6)] An administrative penalty may be assessed for any violation, in lieu of, or in addition to, other disciplinary actions.

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 July 20, 2022.

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §801.305

The Texas Behavioral Health Executive Council proposes the repeal of §801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This rule is proposed to be repealed and replaced with a new schedule of sanctions that is proposed elsewhere in the edition of the *Texas Register*.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because the proposed repeal and replace of the schedule of sanctions rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse

effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists

previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.305. *Schedule of Sanctions.*

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 July 20, 2022.

TRD-202202744

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706



22 TAC §801.305

The Texas Behavioral Health Executive Council proposes new §801.305, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. This new rule has been proposed to replace the current schedule of sanctions and make it easier to use. The format of this new schedule of sanctions will more closely resemble the format used by the other behavioral health boards. There are a few substantive changes being proposed to the schedule currently in effect. Rules that are currently split between an extended and moderate suspension are proposed to be a Level 2 suspension which aligns with the proposed changes to §801.302, which combines the two suspension levels into one, see §§801.44(t) and (v), 801.47, and 801.57(e). Additionally, typographical errors are being corrected with this proposed change and the sanction for 801.47 is now split into subsections (a) and (b) which are a suspension and revocation respectively. And §801.44(s) - (v) have been updated to correspond more accurately to the correct rule and sanction. Lastly, in the April 22, 2022, edition of the *Texas Register*, §801.143(h) - (l) were proposed to be amended so cor-

responding amendments have been made to match those previously proposed changes.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.305. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Texas Occupations Code, Chapter 502 and 22 Texas Administrative Code, Part 35.

Figure: 22 TAC §801.305

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 July 20, 2022.

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**PART 41. TEXAS BEHAVIORAL
HEALTH EXECUTIVE COUNCIL**

CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council proposes amendments to §885.1, relating to Fees.

Overview and Explanation of the Proposed Rule. On October 8, 2019, Governor Greg Abbott sent a letter to all Texas State agency heads instructing agencies to reform occupational-licensing rules in several areas. One such area the Governor focused on was the reduction of fees, specifically the Governor instructed agencies to develop and implement plans to reduce license applications fees to 75% or less of the national average for equivalent or comparable occupations, whenever possible. This proposed amendment is intended to do just that, all application and renewal licensing fees have either been reduced to 75% of the national average or if the fee was already below 75% of the national average then the fee stayed the same. The current fee schedule will remain in effect until September 1, 2023, on this date these new fee changes are scheduled to take effect. Applications fees are proposed to be reduced for the following license types: LCSW by \$9.00, LPC and LPC-Associate by \$56.00, LPA by \$189.00, LP by \$426.00, and LSSP by \$36.00. Renewal fees are proposed to be reduced for the following license types: LBSW and LMSW by \$33.00, LCSW and LMSW-AP by \$55.00, and LP by \$129.00. Additionally, the \$4.00 Texas.gov fee is proposed to be removed from the temporary license application for social workers and the application for criminal history evaluation. The implementation of these proposed fee changes is scheduled to take effect on September 1, 2023, to provide all interested parties the opportunity to comment on these changes. Based upon future comments and information gathered these proposed fee changes may be subject to future proposed changes.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or increase in revenue to the state or local governments as a result of enforcing or administering the rule. However, Mr. Spinks has determined that enforcing or administering the rule does have foreseeable implications relating to a loss of revenues to state government. For fiscal year 2021 the Executive Council generated \$6,098,255.00 in application and renewal fees. It is estimated, using the number of licensees and applicants for fiscal year 2021, the Executive Council will generate \$4,863,897.50 in application and renewal fees under this proposed rule change, which will result in a loss in revenue of \$1,234,357.50 on an annual basis.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees and applicants because the proposed rule will provide

a reduction in fees paid to the Executive Council for applications and renewals. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase in fees paid to the agency, but it will result in a decrease in fees paid to this agency for some license types; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively affect the state's economy but it may have an adverse impact - as discussed previously the proposed rule change may result in a loss in revenue of \$1,234,357.50 to the State on an annual basis.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7-300, Austin, Texas 78701 or by email to rules@bhec.texas.gov. The deadline for receipt of comments

is 5:00 p.m., Central Time, on September 4, 2022, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle 1, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council proposes this amended rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§885.1. *Executive Council Fees.*

(a) General provisions.

(1) All fees are nonrefundable and cannot be waived except as otherwise permitted by law.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees: [Figure: 22 TAC §885.1(b)]

(1) Fees effective through August 31, 2023.
Figure: 22 TAC §885.1(b)(1)

(2) Fees effective on September 1, 2023.
Figure: 22 TAC §885.1(b)(2)

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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 July 20, 2022.

TRD-202202738

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 305-7706

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 553, Licensing Standards for Assisted Living Facilities, amendments to §553.3, relating to Definitions; §553.17, relating to Criteria for Licensing; §553.103, relating to Site and Location for all Assisted Living Facilities; §553.257, relating to Human Resources; and §553.259, relating to Admission Policies and Procedures.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to §553.17 and §553.103 is to implement House Bill (H.B.) 1681, 87th Legislature, Regular Session, 2021. H.B. 1681 prohibits new construction of assisted living facilities (ALFs) in a 100-year flood plain in counties of more than 3.3 million residents. The proposed amendments also update outdated procedural information related to the licensing process.

The purpose of the proposed amendment to §553.257 is to implement Senate Bill (S.B.) 271, 87th Legislature, Regular Session, 2021. S.B. 271 requires ALFs to obtain a signed disclosure, on an HHSC prescribed form, from applicants for employment regarding out-of-state criminal convictions and to perform a name-based criminal history check in any state the applicant has lived in during the previous five years.

The purpose of the proposed amendment to §553.259 is to implement S.B. 383, 87th Legislature, Regular Session, 2021. S.B. 383 requires an ALF that advertises, markets, or otherwise promotes that it provides memory care services to provide an additional HHSC-prescribed memory care disclosure statement to each resident.

The proposed amendments also update rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 92 to 26 TAC Chapter 553, reflect the transfer of functions from the Texas Department of Human Services or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references and requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §553.3 adds new definitions for "Assisted Living Facility Memory Care Disclosure Statement form" and "memory care services" to implement S.B. 383 and renumbers the paragraphs accordingly.

The proposed amendment to §553.17 adds subsections (c)(1)(D) and (h) with the requirement that a newly constructed ALF cannot be located in a 100-year flood plain if the facility is located in a county of more than 3.3 million residents for initial license applications submitted or licenses issued after the effective date of the new rule. Subsections 553.17(d), (f), (h), and (i) update the licensing process to account for the change to the online licensing system.

The proposed amendment to §553.103 adds subsection (h) with the requirement that an ALF that applies for an initial license or that is initially licensed after November 1, 2022, must not be located in a 100-year floodplain if the facility is located in a county of more than 3.3 million residents.

The proposed amendment to §553.257 adds subsection (a)(7) with the requirement that an ALF include a signed disclosure statement, prescribed by HHSC, indicating whether a potential employee has been convicted of an offense described in Texas Health and Safety Code §250.006 and identifying any states in which the employee has lived other than Texas within the past five years. This disclosure statement must be included in the employee's personnel record. Section 553.257(b)(7) requires an ALF to conduct a name-based criminal history check for each state in which an applicant resided within the previous five years.

The proposed amendment to §553.259 adds subsection (a)(4) with the requirement that an ALF that advertises, markets, or otherwise promotes that it provides memory care services to residents provide a HHSC-prescribed memory care disclosure statement to each resident. The amendment also requires an ALF that is Alzheimer's certified to provide HHSC Form 3641 in addition to the memory care disclosure statement and make minor editorial changes to improve readability.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing

and administering the rules as proposed does not have foreseeable implications related to costs or revenues of state or local government.

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 new rules;
- (6) the proposed rules will expand 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 determined that there could be some assisted living facilities that are considered micro businesses or owned by small businesses or rural communities that will experience an adverse economic impact based on costs to comply. There are currently 2,028 licensed ALFs in Texas; 1,114 ALFs are considered small businesses with 16 or fewer residents. HHSC does not know how many ALFs are considered micro-businesses.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased safety of ALF residents by requiring a written disclosure statement from a potential ALF employee regarding criminal history and a disclosure statement from ALF providers who provide memory care. The public will also benefit from the prohibition of building in a 100-year floodplain when certain criteria are met.

ALF providers may incur costs from having to run additional background checks for potential employees that have lived in other states in the past five years. As an example, in Texas there is a \$3 fee per online name-based background check using the Department of Public Safety website. ALF providers may incur costs associated with the printing of the additional Assisted Living Facility Memory Care Disclosure Statement form. HHSC is unable to provide an estimate of the costs each provider may incur.

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 Josie Esparza, Program Specialist, Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltrrules@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) or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R001" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §553.3

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

§553.3. Definitions.

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

(1) Abuse--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure), or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(4) Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(5) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(7) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(9) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(10) Assisted Living Facility Memory Care Disclosure Statement form--The HHSC-prescribed form that a facility uses when the facility advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's disease and related disorders.

(11) [(10)] Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(12) [(11)] Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(13) [(12)] Behavioral emergency--Has the meaning given in §553.261(g)(2) of this chapter (relating to Coordination of Care).

(14) [(13)] Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(15) [(44)] CFR--Code of Federal Regulations.

(16) [(45)] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(17) [(46)] Commingles--The laundering of apparel or linens of two or more individuals together.

(18) [(47)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(19) [(48)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(20) [(49)] Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for personal care staff to perform tasks of nursing care in selected situations, where delegation criteria are met for the task. The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.

(21) [(20)] Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

(22) [(24)] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(23) [(22)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(24) [(23)] Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment

and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(25) [(24)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(26) [(25)] Exploitation--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(27) [(26)] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(28) [(27)] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(29) [(28)] Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(30) [(29)] Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(31) [(30)] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(32) [(31)] Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(33) [(32)] Health maintenance activity (HMA)--Consistent with 22 TAC §225.4 (relating to Definitions), a task that:

(A) may be exempt from delegation based on an RN's assessment in accordance with §553.263(c) of this chapter (relating to Health Maintenance Activities); and

(B) requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

(34) [(33)] HHSC--The Texas Health and Human Services Commission.

(35) [(34)] Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(36) [(35)] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(37) [(36)] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(38) [(37)] Isolated--A very limited number of residents are affected, and a very limited number of staff are involved, or the situation has occurred only occasionally.

(39) [(38)] Key infectious agents--Bacteria, viruses, and other microorganisms which cause the most common infections and infectious diseases in long-term care facilities, and can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(40) [(39)] Large facility--A facility licensed for 17 or more residents.

(41) [(40)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(42) [(41)] License holder--A person that holds a license to operate a facility.

(43) [(42)] Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(44) [(43)] Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(45) [(44)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(46) [(45)] Manager--The individual in charge of the day-to-day operation of the facility.

(47) [(46)] Managing local ombudsman--Has the meaning given in §88.2 of this title.

(48) [(47)] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United

States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(49) [(48)] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(50) [(49)] Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §553.261(a) of this chapter.

(51) [(50)] Medication (self- or self-administration of)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(52) Memory care services--Services provided by an assisted living facility that include enhanced safety measures and that are tailored to meet the needs of residents with a memory impairment or a diagnosis of dementia.

(53) [(51)] Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(54) [(52)] Neglect--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for oneself [one's self] the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(55) [(53)] NFPA 101--The 2012 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(56) [(54)] Ombudsman intern--Has the meaning given in §88.2 of this title.

(57) [(55)] Ombudsman program--Has the meaning given in §88.2 of this title.

(58) [(56)] Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(59) [(57)] Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(60) [(58)] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(61) [(59)] Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(62) [(60)] Personal care staff--An attendant whose primary employment function is to provide personal care services.

(63) [(61)] Physician--A practitioner licensed by the Texas Medical Board.

(64) [(62)] Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(65) [(63)] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(66) [(64)] Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(67) [(65)] Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(68) [(66)] Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(69) [(67)] Resident--An individual accepted for care in a facility.

(70) [(68)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(71) [(69)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(72) [(70)] Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(73) [(71)] RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

(74) [(72)] Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(75) [(73)] Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(76) [(74)] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(77) [(75)] Short-term acute episode--An illness of less than 30 days' duration.

(78) [(76)] Small facility--A facility licensed for 16 or fewer residents.

(79) [(77)] Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.

(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.

(80) [(78)] Staff--Employees of an assisted living facility.

(81) [(79)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(82) [(80)] State Ombudsman--Has the meaning given in §88.2 of this title.

(83) [(81)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(84) [(82)] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(85) [(83)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(86) [(84)] Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247 or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

~~(87)~~ [(85)] Willfully interfere--To act or not act to intentionally prevent, interfere with, impede, or to attempt to intentionally prevent, interfere with, or impede.

~~(88)~~ [(86)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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. LICENSING

26 TAC §553.17

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

§553.17. *Criteria for Licensing.*

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by HHSC; and

(D) if located in a county of more than 3.3 million residents for initial license applications submitted or issued after November 1, 2022, is not located in a 100-year floodplain; and

(2) ~~[(D)]~~ operation of the facility meets HHSC licensing standards based on an on-site health inspection by HHSC, which must include observation of the care of a resident; or

(3) ~~[(2)]~~ the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection ~~(c)~~~~(3)~~ ~~[(e)(2)]~~ of this section must contact HHSC to determine which accreditation commissions are available to meet the requirements of that subsection. If a license holder uses an on-site accreditation survey by an accreditation commission, as provided in this paragraph and §553.33(i) of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC by submitting an updated application in the licensing system within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~] has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~] from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~] has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was ap-

pointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to be disclosed on the application for licensure [~~submit background and qualification information~~]:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751(a)(2) - (9) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person required to be disclosed on the application for licensure [~~a person with a disclosable interest~~], or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person required to be disclosed on the application for licensure [~~with a disclosable interest~~], affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

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SUBCHAPTER D. FACILITY CONSTRUCTION DIVISION 2. PROVISIONS APPLICABLE TO ALL FACILITIES

26 TAC §553.103

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

§553.103. *Site and Location for all Assisted Living Facilities.*

(a) Firefighting unit. An assisted living facility must be served by a professional or volunteer firefighting unit and must have a water supply that meets the firefighting unit's requirements and approval.

(b) Correction of hazards. An assisted living facility must correct a site or building condition that HHSC staff identifies to be a fire, health, or physical hazard.

(c) Parking.

(1) An assisted living facility must provide or arrange for nearby parking spaces for the private vehicles of residents and visitors.

(2) An assisted living facility must provide a minimum of one parking space for every four residents in its licensed capacity, and for any fraction thereof, or per local requirements, whichever is more stringent.

(d) Ramps.

(1) An assisted living facility must ensure a ramp, walk, or step is of slip-resistant texture and is uniform, without irregularities.

(2) An assisted living facility must ensure a ramp does not exceed a slope of one foot in 12 feet.

(3) An assisted living facility must ensure any new ramp has a clear width of at least 36 inches. A new ramp is one that was installed or constructed on or after August 31, 2021.

(e) Site conditions. An assisted living facility must provide a guardrail, fence, or handrail where a grade makes an abrupt change in level.

(f) Outside grounds. An assisted living facility must ensure that each outside area, grounds, and any adjacent buildings are maintained in good condition and kept free of rubbish, garbage, and untended growth that may constitute a fire or health hazard.

(g) Drainage. An assisted living facility must ensure site grades provide for water drainage away from structures to prevent ponding or standing water at or near a building, unless the ponding or standing water is part of an approved drainage system intended to hold water for a period of time.

(h) 100-year Floodplain. An assisted living facility that applies for an initial license or is initially licensed after November 1, 2022, must not be located in a 100-year floodplain, if the facility is located in a county of more than 3.3 million residents.

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SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §553.257, §553.259

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; and Texas Health and Safety Code §247.025 and §247.026, which provide that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 247 and to ensure the quality of care and protection of assisted living facility residents' health and safety, respectively.

The amendment implements Texas Government Code §531.0055 and §531.033, and Texas Health and Safety Code, Chapter 247.

§553.257. *Human Resources.*

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in §553.261(f) of this subchapter (relating to Coordination of Care);

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.261(f) of this subchapter; ~~and~~

(6) the signed statement from the employee referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation; ~~and~~[-]

(7) a signed disclosure statement, indicating whether the employee:

(A) has been convicted of an offense described in Texas Health and Safety Code §250.006; and

(B) has lived in a state other than Texas within the past five years.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployed at least every 12 months.

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(7) If an applicant for employment indicates on the disclosure statement that they have lived in another state within the past five years, a facility, before employing the applicant in a position that has direct contact with residents, must conduct a name-based criminal history check in each state in which the applicant previously resided within the five-year period.

§553.259. *Admission Policies and Procedures.*

(a) Admission policies and disclosure statement.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility and who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all NFPA 101 and physical plant requirements in Subchapter D of this chapter (relating to Facility Construction), and, as applicable, §553.311 (relating to Physical Plant Requirements for Alzheimer's Units), based on each resident's evacuation capabilities, except as provided in subsection (e) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) In addition to the facility disclosure statement, a facility that advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's disease and related disorders, must provide to each resident the Assisted Living Facility Memory Care Disclosure Statement. The facility must disclose whether the facility is certified to provide specialized care to residents with Alzheimer's disease or related disorders.

(A) A facility that is Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement to a resident, must also provide HHSC Form 3641, Alzheimer's Assisted Living Facility Disclosure Statement.

(B) A facility that is not Alzheimer's certified and provides the Assisted Living Facility Memory Care Disclosure Statement, to a resident does not need to provide HHSC form 3641, Alzheimer's Assisted Living Disclosure Statement.

(5) [(4)] Each resident must have a health examination by a physician performed within 30 days before admission or 14 days af-

ter admission, unless a transferring hospital or facility has a physical examination in the medical record.

(6) [(5)] The facility must secure at the time of admission of a resident the following identifying information:

- (A) full name of resident;
- (B) social security number;
- (C) usual residence (where resident lived before admission);
- (D) sex;
- (E) marital status;
- (F) date of birth;
- (G) place of birth;
- (H) usual occupation (during most of working life);
- (I) family, other persons named by the resident, and physician for emergency notification;
- (J) pharmacy preference; and
- (K) Medicaid/Medicare number, if available.

(b) Resident assessment and service plan. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

- (A) the location from which the resident was admitted;
- (B) primary language;
- (C) sleep-cycle issues;
- (D) behavioral symptoms;
- (E) psychosocial issues (e.g. [i.e.], a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);
- (F) Alzheimer's disease/dementia history;
- (G) activities of daily living patterns (e.g., wakened to toilet all or most nights, bathed in morning/night, shower or bath);
- (H) involvement patterns and preferred activity pursuits (e.g. [i.e.], daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);
- (I) cognitive skills for daily decision-making (e.g., independent, modified independence, moderately impaired, severely impaired);
- (J) communication (e.g. [i.e.], ability to communicate with others, communication devices);
- (K) physical functioning (e.g. [i.e.], transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

- (L) continence status;
- (M) nutritional status (e.g., weight changes, nutritional problems or approaches);
- (N) oral/dental status;
- (O) diagnoses;
- (P) medications (e.g., administered, supervised, self-administers);
- (Q) health conditions and possible medication side effects;
- (R) special treatments and procedures;
- (S) hospital admissions within the past six months or since last assessment; and
- (T) preventive health needs (e.g., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed[?] and a service plan developed for them.

(c) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. A facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident's Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the HHSC telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities).

(4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) The facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint and seclusion.

(7) The facility must provide a resident and the resident's legally authorized representative with a written copy of the facility's emergency preparedness plan or an evacuation summary, as required

under §553.275(d) of this subchapter (relating to Emergency Preparedness and Response[?]).

(d) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

- (i) the resident's legal guardian;
- (ii) a person responsible for the resident's health care decisions;
- (iii) the resident's spouse;
- (iv) the resident's adult child;
- (v) the resident's parents; or
- (vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) HHSC imposes an administrative penalty of \$500 for failure to inform the resident of facility policies regarding the implementation of advance directives.

(A) HHSC sends a facility written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which HHSC sends written notice to a facility, the facility must give written consent to the penalty or make written request to HHSC for an administrative hearing.

(C) Hearings are held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(e) Inappropriate placement in Type A or Type B facilities.

(1) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If HHSC determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits the following to the HHSC regional office:

- (i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(2) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements for the evacuation of a designated resident referenced in §553.5 of this chapter (relating to Types of Assisted Living Facilities).

(A) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, from the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by HHSC.

(D) A facility must meet the following criteria to receive a waiver from HHSC:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff are on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) HHSC reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.

(F) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.

(G) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the HHSC regional office, or HHSC denies the waiver as described in paragraph (2) of this subsection, HHSC may:

(A) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of HHSC training on aging in place and retaliation.

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 July 25, 2022.

TRD-202202784

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 4, 2022

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



CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, amendments to §554.101, relating to Definitions; §554.204, relating to Application Requirements; §554.403, relating to Notice of Rights and Services; §554.1921, relating to General Requirements for a Nursing Facility; §554.1935, relating to Automated External Defibrillators; §554.2002, relating to Procedural Requirements-Licensure Inspections and Surveys; and §554.2326, relating to Medicaid Swing Bed Program for Rural Hospitals. HHSC proposes the repeal of §554.1913, relating to Clinical Records Service Supervisor.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to §§554.101, 554.204, 554.403, and 554.1921 is to implement Senate Bill (S.B.) 383, 87th Legislature, Regular Session, 2021. S.B. 383 requires a nursing facility (NF) that advertises, markets, or otherwise promotes that it provides memory care services to provide an additional HHSC prescribed memory care disclosure statement to each resident or resident representative and to each person applying for services from the facility or that person's next of kin or guardian.

The purpose of the proposed repeal of §554.1913 and amendment to §554.2326 is to remove the requirement for a NF to employ a clinical records supervisor or other medical records keeper.

The purpose of the proposed amendment to §554.1935 is to implement S.B. 199, 87th Legislature, Regular Session, 2021. S.B. 199 requires a NF to conduct monthly inspections of its automated external defibrillator.

The purpose of the proposed amendment to §554.2002 is to implement House Bill (H.B.) 1423, 87th Legislature, Regular Session, 2021. H.B. 1423 increases the survey frequency of required unannounced NF inspections from two per three-year licensing period to one annually. H.B. 1423 also allows HHSC to conduct a follow-up inspection for evaluation and monitoring purposes to ensure HHSC is citing deficiencies consistently.

The proposed amendments also update rule references that became outdated as a result of the administrative transfer of rules from 40 TAC Chapter 19 to 26 TAC Chapter 554, reflect the transfer of functions from the Texas Department of Human Ser-

vices or the Texas Department of Aging and Disability Services to HHSC, update terminology, and remove outdated references and requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §554.101 adds paragraphs (10), (40), (81), and (82) with new definitions for "Alzheimer's Disclosure Statement for Nursing Facilities," "Essential Caregiver," "Memory Care Disclosure Statement for Nursing Facilities," and "Memory care services."

The proposed amendment to §554.204(a) and (b) revises requirements for the application process to account for the online application system. The proposed amendment also removes the outdated requirement that a NF provide with its application for licensure the required disclosure statement regarding a NF's care and treatment of residents with Alzheimer's disease and related disorders, a certificate of good standing issued by the Comptroller of Public Accounts, and a certificate of incorporation or partnership agreement.

The proposed amendment to §554.403 adds new subsections (n) and (o). New subsection (n)(1) adds language requiring a NF that advertises, markets, or otherwise promotes that it provides memory care services to residents, to provide an HHSC prescribed memory care disclosure statement to each resident or resident representative and to each person applying for services from the facility or that person's next of kin or guardian. New subsection (n)(2) adds language requiring a NF that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, to provide HHSC Form 3641-A, Alzheimer's Disclosure Statement for Nursing Facilities, to each resident or resident representative, each person applying for services from the facility or that person's next of kin or guardian, and a person seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders. This new subsection replaces §554.1921(f). New subsection (o) requires a NF to provide an amended disclosure statement, required by subsection (n)(1) and (2) of this section, to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.

The proposed repeal of §554.1913 removes the requirement that a NF employ a clinical records supervisor or other medical records keeper. The proposed amendment to §554.2326(e) removes a reference to this requirement for a NF to employ a clinical records supervisor or other medical records keeper.

The proposed amendment to §554.1921 deletes subsection (f) to remove the outdated requirement that a NF provide a disclosure statement if it advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders. This subsection is replaced by §554.403(n)(2).

The proposed amendment to §554.1935 adds a new subsection (f). This new subsection requires a NF to conduct monthly inspections to verify that the automated external defibrillator in the NF is in its designated location, is ready for use, and does not appear to be damaged.

The proposed amendment to §554.2002(g) adds language that increases the survey frequency of required unannounced NF inspections from two per three-year licensing period to one annually and deletes references to certain organizations that no longer participate in HHSC inspections. HHSC is not proposing

any rule changes to allow HHSC to conduct a follow-up inspection for evaluation and monitoring purposes to ensure HHSC is citing deficiencies consistently. HHSC believes the language currently in §554.2002(i) allows these follow-up inspections.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create new rules;
- (6) the proposed rules will repeal an existing rule;
- (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 could be some nursing facilities owned by small businesses, micro-business, or rural communities that will experience an adverse economic effect based on costs to comply. There are currently about 1,200 licensed NFs in Texas. HHSC doesn't know how many NFs are considered small businesses, micro-businesses, or rural communities.

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 to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from increased safety of NF residents by requiring disclosure statements from NF providers who provide memory care services and monthly defibrillator inspections by NFs. The public will also benefit from improved inspection and penalty standards.

NF providers may incur costs associated with the printing of the additional Alzheimer's Disclosure Statement for Nursing Facilities and Memory Care Disclosure Statement for Nursing Facilities forms.

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 Josie Esparza, Program Specialist, Texas Health and Human Services Commission, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751; or by email to hhscltrrules@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 post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R001" in the subject line.

SUBCHAPTER B. DEFINITIONS

26 TAC §554.101

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.101. *Definitions.*

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

(1) **Abuse**--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (indecent exposure) or Texas Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.

(2) **Act**--Chapter 242 of the Texas Health and Safety Code.

(3) **Activities assessment**--See Comprehensive Assessment and Comprehensive Care Plan.

(4) **Activity director**--The qualified individual appointed by the facility to direct the activities program as described in §554.702 [~~§19.702~~] of this chapter (relating to Activities).

(5) **Addition**--The addition of floor space to an institution.

(6) **Administrator**--A person currently licensed in accordance with 26 TAC Chapter 555 (relating to Nursing Facility Administrators).

(7) **Admission MDS assessment**--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) **Advanced practice registered nurse**--A person licensed as a registered nurse and approved to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) **Adverse event**--An untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk of death or serious injury.

(10) **Alzheimer's Disclosure Statement for Nursing Facilities**--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(11) [~~(10)~~] **Alzheimer's disease and related disorders**--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) [~~(11)~~] **Applicant**--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(13) [~~(12)~~] **Attending physician**--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or resident representative as having primary responsibility for the treatment and care of the resident.

(14) [~~(13)~~] **Authorized electronic monitoring**--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(15) [~~(14)~~] **Barrier precautions**--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) [~~(15)~~] **Care and treatment**--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning, and reasonable safety, all consistent with the preferences of the resident.

(17) [~~(16)~~] **Certification**--The determination by HHSC that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) [~~(17)~~] **Certified facility**--A facility that meets the requirements of the Medicare program, the Medicaid program, or both.

(19) [~~(18)~~] **Certified Ombudsman**--Has the meaning given in [26 TAC] §88.2 of this title (relating to Definitions).

(20) [~~(19)~~] **CFR**--Code of Federal Regulations.

(21) [~~(20)~~] **Change of ownership**--An event that results in a change to the federal taxpayer identification number of the license

holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(22) [(21)] Chemical restraints--Any drug administered for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms.

(23) [(22)] CMS--Centers for Medicare & Medicaid Services.

(24) [(23)] Complaint--Any allegation received by HHSC other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(25) [(24)] Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(26) [(25)] Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §554.801(2) [§19.801(2)] of this chapter (relating to Resident Assessment).

(27) [(26)] Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §554.802(c)(2) [§19.802(e)(2)] of this chapter (relating to Comprehensive Person-Centered Care Planning), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

- (A) goal setting;
- (B) establishing priorities for management of care;
- (C) making decisions about specific measures to be used to resolve the resident's problems; and
- (D) assisting in the development of appropriate coping mechanisms.

(28) [(27)] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

- (A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;
- (B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;
- (C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and
- (D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant,

or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(29) [(28)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(30) [(29)] DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(31) [(30)] Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(32) [(31)] DHS--This term referred to the Texas Department of Human Services; it now refers to HHSC.

(33) [(32)] Dietitian--A qualified dietitian is one who is qualified based upon either:

- (A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or
- (B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code, Chapter 701 and one year of supervisory experience in dietetic service of a health care facility.

(34) [(33)] Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(35) [(34)] Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(36) [(35)] Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program or as a SNF in the Medicare program.

(37) [(36)] Drug (also referred to as medication)--Any of the following:

- (A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- (B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;
- (C) any substance (other than food) intended to affect the structure or any function of the body of a human; and
- (D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(38) [(37)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(39) [(38)] Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(40) Essential Caregiver--A family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR) during a

public health emergency or disaster. In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver.

(41) [(39)] Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(42) [(40)] Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(43) [(41)] Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act (42 U.S.C. §1396r(a) - (d)). A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in [26 TAC] Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(44) [(42)] Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(45) [(43)] Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(46) [(44)] Fiduciary agent--An individual who holds in trust another's monies.

(47) [(45)] Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(48) [(46)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(49) [(47)] Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) [(48)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative

Procedure Act) and 40 TAC Chapter 91 [of this title] (relating to Hearings Under the Administrative Procedure Act).

(51) [(49)] HHSC--The Texas Health and Human Services Commission.

(52) [(50)] HIV--Human Immunodeficiency Virus.

(53) [(51)] Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to HHSC.

(54) [(52)] Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(55) [(53)] Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(56) [(54)] Inspection--Any on-site visit to or survey of an institution by HHSC for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(57) [(55)] Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed [tø] 24 hours, until professional staff can develop a care plan to meet the resident's needs.

(58) [(56)] IV--Intravenous.

(59) [(57)] Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(60) [(58)] License holder--A person that holds a license to operate a facility.

(61) [(59)] Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical therapist assistant; [øf] occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; licensed social worker; or certified respiratory care practitioner.

(62) [(60)] Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(63) [(61)] Life Safety Code--NFPA 101.

(64) [(62)] Life safety features--Fire safety components required by NFPA 101, including building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) [(63)] Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §554.419 [§19.419] of this chapter (relating to Advance Directives)).

(66) [(64)] Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) [(65)] Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(68) [(66)] Long-term care-regulatory--HHSC Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Medicaid participation.

(69) [(67)] Major injury--An injury that qualifies as a major injury under NFPA 99.

(70) [(68)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) [(69)] Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(72) [(70)] Managing local ombudsman--Has the meaning given in [26 FAC] §88.2 of this title [(relating to Definitions)].

(73) [(71)] MDS--Minimum data set. See RAI.

(74) [(72)] MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(75) [(73)] Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(76) [(74)] Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(77) [(75)] Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(78) [(76)] Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(79) [(77)] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(80) [(78)] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 557 [95] of this title (relating to Medication Aides-Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) Memory Care Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses when the facility advertises, markets, or otherwise promotes that it provides services, including memory care services, to residents with Alzheimer's disease and related disorders.

(82) Memory care services--Services provided by a nursing facility that include enhanced safety measures and that are tailored to meet the needs of residents with a memory impairment or diagnosis of dementia.

(83) [(79)] Misappropriation--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(84) [(80)] MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(85) [(81)] Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(86) [(82)] NFPA--National Fire Protection Association.

(87) [(83)] NFPA 99--NFPA 99, Health Care Facilities Code, 2012 Edition.

(88) [(84)] NFPA 101--NFPA 101, Life Safety Code, 2012 Edition.

(89) [(85)] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This term may include an individual who provides these services through an agency or under a contract with the facility. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(90) [(86)] Nurse practitioner--An advanced practice registered nurse licensed by the Texas Board of Nursing in the role of Nurse Practitioner.

(91) [(87)] Nurses' station--A nurses' station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(92) [(88)] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(93) [(89)] Nursing facility or nursing home--See definition of "facility."

(94) [(90)] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(95) [(91)] Objectives--See definition of "goals."

(96) [(92)] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform.

(97) [(93)] Ombudsman intern--Has the meaning given in [26 TAC] §88.2 of this title [(relating to Definitions)].

(98) [(94)] Ombudsman Program--Has the meaning given in [26 TAC] §88.2 of this title [(relating to Definitions)].

(99) [(95)] Paid feeding assistant--An individual who meets the requirements of §554.1113 [§19.1113] of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(100) [(97)] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) [(96)] PASARR or PASRR--Preadmission Screening and Resident Review.

(102) [(98)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(103) [(99)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(104) [(100)] Person-centered care--To focus on the resident as the locus of control, and to support the resident in making choices and having control over the resident's daily life.

(105) [(101)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(106) [(102)] Physical restraint--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(107) [(103)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board to practice medicine.

(108) [(104)] Physician assistant (PA)--An individual who is licensed as a physician assistant under Texas Occupations Code, Chapter 204.

(109) [(105)] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners.

(110) [(106)] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(111) [(107)] Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(112) [(108)] Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(113) [(109)] PRN (pro re nata)--As needed.

(114) [(110)] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with HHSC.

(115) [(111)] Qualified mental health professional - community services--Has the meaning given in §301.303 of this title [25 TAC §412.303] (relating to Definitions).

(116) [(112)] Qualified surveyor--An employee of HHSC who has completed state and federal training on the survey process and passed a federal standardized exam.

(117) [(113)] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(118) [(115)] Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(119) [(114)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by HHSC who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of HHSC Regulatory Services Division.

(120) [(116)] RAI--Resident Assessment Instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U. S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core elements as specified by CMS; utilization guidelines; and Care Area Assessment process.

(121) [(117)] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(122) [(118)] Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(123) [(119)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(124) [(120)] Resident--Any individual residing in a nursing facility.

(125) [(121)] Resident group--A group or council of residents who meet regularly.

(126) [(122)] Resident representative--

(A) Any of the following:

(i) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(ii) a person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(iii) legal representative, as used in Section 712 of the Older Americans Act (40 U.S.C. §3058g); or

(iv) the court-appointed guardian of a resident.

(B) This definition is not intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

(127) [(123)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(128) [(124)] Restraint--A chemical or physical restraint.

(129) [(125)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(130) [(126)] RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(131) [(127)] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by HHSC.

(132) [(128)] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate HHSC pays a nursing facility for services provided to the recipient.

(133) [(129)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(134) [(130)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(135) [(131)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(136) [(132)] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(137) [(133)] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by supervised employment providing social services in a health care setting.

(138) [(134)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(139) [(135)] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(140) [(136)] State Ombudsman--Has the meaning given in [26 FAC] §88.2 of this title [(relating to Definitions)].

(141) [(137)] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(142) [(138)] Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §554.2107 [§19.2107] of this chapter (relating to Revocation of a License by the HHSC Executive Commissioner).

(143) [(139)] Substandard quality of care violation--A violation of §554.401(a) or (b); §554.402(b), (c), or (m); §554.406(d) - (h); §554.417(a), (b), or (d); §554.425(b)(1); §554.504(a); §554.601; §554.602; §554.701; §554.703; §554.706(a), (c), (d)(1) - (5), or (e)(7); §554.801; §554.901; §554.904(2) or (4); §554.1501(5), (6), or (7); or §554.1601(c)(2) [§19.401(a), §19.401(b), §19.402(b), (e), or (m); §19.406(d) - (h); §19.417(a), (b), or (d); §19.425(b)(1); §19.504(a); §19.601; §19.602; §19.701; §19.703; §19.706(a), (c), (d)(1) - (5), or (e)(7); §19.801; §19.901; §19.904(2) or (4); §19.1501(5), (6), or (7); or §19.1601(e)(2)] of this chapter (relating to Resident Rights) that constitutes:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(144) [(140)] Supervision--General supervision, unless otherwise identified.

(145) [(141)] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(146) [(142)] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(147) [(143)] Survey agency--HHSC is the agency that, through contractual agreement with CMS, is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(148) [(144)] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. [The *Texas Register* was established by the *Administrative Procedure and Texas Register Act of 1975*.]

(149) [(145)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(150) [(146)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(151) [(147)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act (42 U.S.C. §§401 - 434).

(152) [(148)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act (42 U.S.C. §§1381 - 1385).

(153) [(149)] Title XVIII--Medicare provisions of the Social Security Act (42 U.S.C. §§1390 - 1395lll).

(154) [(150)] Title XIX--Medicaid provisions of the Social Security Act (42 U.S.C. §§1396 - 1396w-5).

(155) [(151)] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(156) [(152)] Universal precautions--The use of barrier precautions and other precautions to prevent the spread of blood-borne diseases.

(157) [(153)] Unreasonable confinement--Involuntary seclusion.

(158) [(154)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(159) [(155)] Vendor payment--Payment made by HHSC on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(160) [(156)] Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all of a facility's residents.

(161) [(157)] Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(162) [(158)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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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Health and Human Services Commission

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SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

26 TAC §554.204

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.204. *Application Requirements.*

(a) Applications. All applications must be made on forms prescribed by and available from the Texas Health and Human Services Commission (HHSC). All applications must be submitted through the licensure system [DADS].

(1) Each application must be completed in accordance with HHSC [DADS] instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to HHSC by submitting a change application in the licensure system [DADS], as required by §554.1918 [§19-1918] of this chapter [title] (relating to Disclosure of Ownership).

(b) General information required. An applicant for an initial application or change of ownership, must file with HHSC [DADS] an application in the licensure system that contains:

[+] [for initial applications and change of ownership only] evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to HHSC. [DADS;]

[(2) a certificate of good standing issued by the Comptroller of Public Accounts;]

[(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and]

[(4) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.]

[(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).]

[(B) The disclosure statement must contain the following information:]

[(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;]

[(ii) whether the facility is certified under Texas Health and Safety Code §242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;]

[(iii) the preadmission, admission, and discharge process;]

[(iv) resident assessment, care planning, and implementation of the care plan;]

[(v) staffing patterns, such as resident to staff ratios, and staff training;]

[(vi) the physical environment of the facility;]

[(vii) resident activities;]

[(viii) program charges;]

[(ix) systems for evaluation of the facility's program;]

[(x) family involvement in resident care; and]

[(xi) the telephone number for DADS toll-free complaint line.]

[(C) A facility must:]

[(i) amend its disclosure statement if changes in the operation of the facility will affect the information in the disclosure statement required by subparagraph (B)(i) - (xi) of this paragraph; and]

[(ii) submit the amended disclosure statement to DADS at least 30 days before the changes are effective.]

(c) Requested information. An applicant or license holder must provide any information HHSC [DADS] requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

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

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SUBCHAPTER E. RESIDENT RIGHTS

26 TAC §554.403

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.403. *Notice of Rights and Services.*

(a) The facility must inform the resident, both orally and in writing, in a language that the resident understands, of the resident's rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. This notification must be made prior to or upon admission and during the resident's stay if changed.

(b) The facility must also inform the resident, upon admission and during the stay, in a language the resident understands, of the following:

(1) facility admission policies;

(2) a description of the protection of personal funds as described in §554.404 [§19.404] of this subchapter (relating to Protection of Resident Funds);

(3) the Texas Human Resources Code, Title 6, Chapter 102; or a written list of the rights and responsibilities contained in the Texas Human Resources Code, Title 6, Chapter 102;

(4) a written description of the services available through the Ombudsman Program. This information must be made available to each facility by the ombudsman program. Facilities are responsible for reproducing this information and making it available to residents, their families, and resident representatives;

(5) a written statement to the resident, the resident's next of kin, or guardian describing the facility's policy for:

(A) the drug testing of employees who have direct contact with residents; and

(B) the criminal history checks of employees and applicants for employment; ~~and~~

(6) HHSC rules and the facility's policies related to the use of restraint and involuntary seclusion. This information must also be given to the resident's legally authorized representative, if the resident has one; ~~and~~[-]

(7) facility essential caregiver policies and procedures during a public health emergency or disaster, and this information must also be given to the resident's legally authorized representative, if the resident has one.

(c) Upon admission of a resident, a facility must:

(1) provide written information to the resident's family representative, in a language the representative understands, of the right to form a family council; or

(2) inform the resident's family representative, in writing, if a family council exists, of the council's meeting time, date, location and contact person.

(d) Receipt of information in subsections (b) - (d) of this section, and any amendments to it, must be acknowledged in writing by all parties receiving the information.

(e) The facility must post a copy of the documents specified in subsections (a) and (b) of this section in a conspicuous location.

(f) The resident or the resident's legal representative has the following rights:

(1) upon an oral or written request to the facility, to access all records pertaining to the resident, including clinical records, within 24 hours (excluding weekends and holidays); and

(2) to purchase photocopies of all or any portion of the records upon request and two workdays advance notice to the facility.

(g) The resident has the right to be fully informed in language the resident understands of the resident's total health status, including the resident's medical condition.

(h) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §554.419 [§19.419] of this subchapter (relating to Advance Directives), and to refuse to participate in experimental research.

(1) If the resident refuses treatment, the resident must be informed of the possible consequences.

(2) If the resident chooses to participate in experimental research, the resident must be fully notified of the research and possible effects of the research. The research may be carried on only with the full written consent of the resident's physician, and the resident.

(3) Experimental research must comply with Federal Drug Administration regulations on human research as found in 45 CFR, Part 46.

(i) The facility must inform a resident before, or at the time of admission, and periodically during the resident's stay (if there are any changes), of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(j) The facility must provide a written description of a resident's legal rights, which includes:

(1) a description of the manner of protecting personal funds, described in §554.404 [§19.404] of this subchapter;

(2) a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as HHSC, the Ombudsman Program, the protection and advocacy network, and, in Medicaid-certified facilities, the Medicaid fraud control unit; and

(3) a statement that the resident may file a complaint with HHSC concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(k) The facility must inform a resident of the name, specialty, and way of contacting the physician responsible for the resident's care.

(l) Notification of changes.

(1) A facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with the representative's authority, the resident representative when there is:

(A) an accident involving the resident that results in injury and has the potential for requiring physician intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) a need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) a decision to transfer or discharge the resident from the facility.

(2) The facility also must promptly notify the resident and the resident representative, if any, when there is:

(A) a change in room or roommate assignment with the reason for the change provided in writing; or

(B) a change in resident rights under federal or state law or regulations as described in subsection (b) of this section.

(3) The facility must record and periodically update the address and phone number of the resident.

(m) Additional requirements for Medicaid-certified facilities. Medicaid-certified facilities must:

(1) provide the resident with the state-developed notice of rights under §1919(e)(6) of the Social Security Act (42 U.S.C. §1396r(e)(6));

(2) inform a resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of:

(A) the items and services that are included in nursing facility services provided under the State Plan and for which the resident may not be charged;

(B) those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services;

(3) inform each resident when changes are made to the items and services specified in paragraph (2)(A) and (B) of this subsection;

(4) provide a written description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under §1924(c) of the Social Security Act (42 U.S.C. §1396r-5(c)), which:

(A) is used to determine the extent of a couple's nonexempt resources at the time of institutionalization; and

(B) attributes to the community spouse an equitable share of resources that cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in the process of spending down to Medicaid eligibility levels; and

(5) prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(n) Additional requirements for certain facilities related to memory care and Alzheimer's disease and related disorders. Facilities must provide the following HHSC forms:

(1) for a facility that advertises, markets, or otherwise promotes that it provides memory care services to residents, the Memory Care Disclosure Statement for Nursing Facilities, to each resident, disclosing as required by the Texas Health and Safety Code §242.0405 whether the facility is certified to provide specialized care and treatment for a resident with Alzheimer's disease and related disorders to:

(A) each resident or resident representative; and

(B) each person applying for services from the facility or that person's next of kin or guardian; or

(2) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, HHSC Form 3641-A, Alzheimer's Disclosure Statement for Nursing Facilities, disclosing as required by the Texas Health and Safety Code §242.202 whether the facility is certified to provide specialized care and treatment for a resident with Alzheimer's disease and related disorders to:

(A) each resident or resident representative;

(B) each person seeking to become a resident of the facility or that person's representative; and

(C) a person seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders.

(o) Amended disclosure statement. A facility must provide an amended disclosure statement required by subsection (n)(1) and (2) of this section, to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.

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

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Karen Ray

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SUBCHAPTER T. ADMINISTRATION

26 TAC §554.1913

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The repeal implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.1913. *Clinical Records Service Supervisor.*

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

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26 TAC §554.1921, §554.1935

STATUTORY AUTHORITY

The amendments 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 rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendments implement Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.1921. *General Requirements for a Nursing Facility.*

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §554.2310 [~~§19.2310~~] of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by HHSC [~~DADS~~]. The following items must be posted:

(1) the facility license;

(2) a complaint sign provided by HHSC [~~DADS~~] giving the toll-free telephone number;

(3) a notice in a form prescribed by HHSC [~~DADS~~] that inspection and related reports are available at the facility for public inspection;

(4) a concise summary prepared by HHSC [~~DADS~~] of the most recent inspection report;

(5) a notice of HHSC [~~DADS~~] toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;

(6) a notice that HHSC [~~DADS~~] can provide information about the nursing facility administrator at (512) 438-2015 [~~512-438-2015~~];

(7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;

(8) the statement of resident rights provided in §554.401 [~~§19.401~~] of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A;

(10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO HHSC [THE DEPARTMENT OF AGING AND DISABILITY SERVICES] BY CALLING 1-800-458-9858;

(11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §554.403(n)(2) [~~§19.204(b)(4)~~] of this chapter (relating to Notice of Rights and Services [~~Application Requirements~~]);

(12) at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Government Code §411.204; and

(13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

~~{(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give: }~~

~~{(1) the disclosure statement required by §19.204(b)(4) of this chapter (related to Application Requirements) to:}~~

~~{(A) an individual with Alzheimer's disease or a related disorder who is seeking to become a resident of the facility;}~~

~~{(B) an individual assisting an individual with Alzheimer's disease or a related disorder who is seeking to become a resident of the facility; and}~~

~~{(C) an individual seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders; and}~~

~~{(2) an amended disclosure statement required by §19.204(b)(4)(C) to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.}~~

~~(f) [(g)] The reports referenced in subsection (e)(3) of this section must be maintained in a well-lighted, accessible location and must include:~~

~~(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by HHSC [~~DADS~~]; and~~

~~(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and HHSC [~~DADS~~] has determined that the facility is in full compliance with the applicable requirement.~~

~~(g) [(h)] The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.~~

~~(h) [(i)] A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.~~

~~(i) [(j)] A copy of the Texas Health and Safety Code, Chapters 242 and 260A, must be available for public inspection at the facility.~~

(j) [(k)] Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §554.416 [§19.416] of this chapter (relating to Personal Property).

(k) [(h)] Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(l) [(m)] Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC [DADS] nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the HHSC [DADS] Internet website.

(m) [(n)] A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(n) [(o)] A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 [of this title] (relating to Employment and Registry Information).

(o) [(p)] In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

[(q)] A facility must upload to the DADS website, at <http://fives.dads.state.tx.us/choose.asp>, a statement of all facility requirements involving resident rights and responsibilities that are not described in §19.401(b) of this chapter. The facility must promptly upload a revised statement if the facility changes its requirements.]

§554.1935. *Automated External Defibrillators.*

(a) In this section:

(1) "automated external defibrillator" means a heart monitor and defibrillator that:

(A) has received approval from the United States Food and Drug Administration of its premarket notification filed under United States Code, Title 21, §360(k);

(B) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia;

(C) is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(D) after determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; and

(2) "onsite" means:

(A) in a single story building;

(B) on each floor of a multiple story building; or

(C) in each small house of a multiple small house model.

(b) A facility must have at least one automated external defibrillator available for use onsite at all times. The facility must place the automated external defibrillator in a location that is easily accessible for staff persons who are trained to operate it.

(c) A facility must ensure at least one staff person who has completed and maintains training in cardiopulmonary resuscitation (CPR) and automated external defibrillator operation in accordance with the guidelines established by the defibrillator's manufacturer and as approved by the American Heart Association, the American Red Cross, or other nationally recognized associations is onsite at all times.

(d) A facility must ensure that a licensed physician provides medical consultation or general oversight of the staff training to ensure the facility complies with subsection (c) of this section.

(e) A facility must maintain and test the automated external defibrillator according to the manufacturer's guidelines and keep records of the maintenance and testing.

(f) A facility must conduct a monthly inspection to verify the automated external defibrillator:

(1) is placed at its designated location;

(2) reasonably appears to be ready for use; and

(3) does not reasonably appear to be damaged in a manner that could prevent operation.

(g) [(h)] A facility must ensure the use of an automated external defibrillator is consistent with a resident's advance directive executed or issued under Texas Health and Safety Code, Chapter 166, Subchapter C.

(h) [(g)] The facility must notify the local emergency medical services provider by calling 9-1-1, per standard CPR procedures, while using an automated external defibrillator on a resident.

(i) [(h)] Within 24 hours after acquiring an automated external defibrillator, a facility must notify the local emergency medical services provider of:

(1) the existence of the automated external defibrillator;

(2) the location of the automated external defibrillator in the facility; and

(3) the type of automated external defibrillator.

(j) [(i)] If a facility has an automated external defibrillator on the effective date of this rule, the facility must provide the notification described in subsection (i) [(h)] of this section within seven days after the effective date.

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 U. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §554.2002

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.2002. Procedural Requirements--Licensure Inspections and Surveys.

(a) HHSC inspection and survey personnel perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate or as required for carrying out the responsibilities of licensing.

(b) An inspection may be conducted by an individual qualified surveyor or by a team, of which at least one member is a qualified surveyor.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or non-routine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified. Releasing advance information of an unannounced inspection is a third degree felony, as provided in §242.045 of the Health and Safety Code.

(e) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or conditions when certain emergencies

arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;

(2) the State Ombudsman, a certified ombudsman, and an ombudsman intern who are authorized to attend and participate in inspections;

(3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

(4) representatives of HHSC whose programs relate to the Medicare/Medicaid long term care program.

(g) HHSC conducts at least one ~~two~~ unannounced inspection annually [inspections during each licensing period] of each institution licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection. For purposes of this subsection, "annually" means a statewide average of once every 12 months.

(1) In order to ensure continuous compliance, a sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. in randomly selected institutions. This cursory after-hours inspection is conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents is minimal.

(2) For at least one ~~two~~ unannounced inspection annually [inspections each licensing period], HHSC invites to the inspections at least one person as a citizen advocate from [~~the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees;~~] the Ombudsman Program~~;~~ or any other statewide organization for older adults [~~the elderly~~]. HHSC provides to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all protocols of HHSC. Advocates provide their own transportation. The schedule of inspections in this category are arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) During an inspection, survey, or investigation, HHSC is authorized to photocopy documents, photograph residents, and use any other available recordation devices to preserve all relevant evidence of conditions that HHSC reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC at the rate not to exceed the rate charged by HHSC for copies. The procedure of copying is the responsibility of the administrator or his designee. If copying requires the records be removed from the facility, a representative of the facility is expected to accompany the records and assure their order and preservation.

(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC [department] policy.

(i) HHSC provides for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At HHSC's discretion, based on record review, random sample, or any other determination, HHSC may assign a team to conduct a validation survey. HHSC may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities are required to correct any additional deficiencies cited by the validation team but are not subject to any new or additional punitive action.

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 X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

26 TAC §554.2326

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility; and Texas Health and Safety Code §242.037, which requires the Executive Commissioner of HHSC to make and enforce rules prescribing the minimum standards relating to quality of life, quality of care, and resident rights for nursing facility residents.

The amendment implements Texas Government Code §531.0055 and §534.033 and Texas Health and Safety Code Chapter 242.

§554.2326. *Medicaid Swing Bed Program for Rural Hospitals.*

(a) Program description. HHSC [DADS] operates the Medicaid Swing Bed Program for rural hospitals located in counties with populations of 100,000 or less. The Medicaid Swing Bed Program is modeled on Medicare's Swing Bed Program. The Medicaid Swing Bed Program permits participating rural hospitals to use their beds interchangeably to furnish both acute hospital care and nursing facility care to Medicaid recipients, when no care beds are available in nursing facilities (NFs) in the area. When a participating rural hospital furnishes

NF nursing care to Medicaid recipients, HHSC [DADS] makes payment to the hospital using the same procedures and the same Resource Utilization Group daily rates that the Texas Health and Human Services Commission authorizes for reimbursing NFs participating in the Texas Medicaid Nursing Home Program.

(b) Application to participate. Rural hospitals apply to HHSC [DADS] to participate in the Medicaid Swing Bed Program. Each applicant must be located in a county with a population of 100,000 or less and must meet the qualifying requirements of the Medicare Swing Bed Program. Hospitals approved for participation enter into swing bed provider agreements with HHSC [DADS].

(c) Parallel participation in Medicare. A rural hospital participating in the Medicaid Swing Bed Program must:

(1) have a Medicare hospital provider agreement; and

(2) be Medicare-certified [by the Department of State Health Services (DSHS)] as a swing bed hospital in the Medicare Swing Bed Program.

(d) Applicability of Medicare requirements. Each participating rural hospital must satisfy all the requirements of the Medicare Swing Bed Program, except that Medicare's five-weekday transfer requirement[, as stated in §482.66(b)(i)-(ii), 42 Code of Federal Regulations,] and 15 percent [15%] payment limitation, as stated in 42 CFR §413.114(d)(2), do not apply for Medicaid reimbursement purposes.

(e) Applicability of NF requirements. From day one of the resident's stay, a rural hospital participating in the Medicaid Swing Bed Program must meet the requirements set forth in §554.101 [§19.101] of this chapter [title] (relating to Definitions); §554.2304(c) [§19.2304(e)] of this chapter [title] (relating to Contract Requirements); §§554.300 - 554.314 [§§19.300 -19.314] and 554.316 [19.316] of this chapter [title] (relating to General Requirements; Definitions; Applicable Codes and Standards; [Waivers;] Emergency Power; Space and Equipment; Resident Rooms; Toilet Facilities; Resident Call System; Dining and Resident Activities; Other Environmental Conditions; Site and Grounds; Fire Service and Access; [Means of Egress;] Interior Finishes - Walls, Ceilings, and Floors; and Fire Alarms, Detection Systems, and Sprinkler Systems; [and Subdivision of Building Spaces - Smoke Barriers]); §§554.1901 - 554.1912, 554.1914, and 554.1917 [§§19.1901 -19.1914 and 19.1917] of this chapter [title] (relating to Administration; Governing Body; Staff Qualifications; [Required Training of Nurse Aides; Proficiency of Nurse Aides; Staff Qualifications;] Use of Outside Resources; Medical Director; Laboratory Services; Radiology and Other Diagnostic Services; Clinical Records; Contents of the Clinical Record; Additional Clinical Record Service Requirements; Emergency Preparedness and Response [Clinical Records Service Supervisor; Disaster and Emergency Preparedness]; and Quality Assessment and Assurance); §§554.2601 - 554.2608 [§§19.2601 - 19.2608] and 554.2610 [19.2610] of this chapter [title] (relating to [Subchapter AA,] Vendor Payment (Items and Services Included), Additional Charges (Items and Services Excluded from Vendor Payment), Therapeutic Home Visits Away from the Facility, Vendor Payment Information, Effective Date of Vendor Coverage, Supplementation of Vendor Payments, Penalties for Supplementation, Limitations on Provider Charges, and Medicare part A Skilled Nursing Facility Deductible and Coinsurance Payment); and Subchapter Y of this chapter [title] (relating to Medical Necessity Determinations)[; and Appendix B, Cost Determination Process]; and Appendix C, Reimbursement Methodology for Nursing Facilities; of DADS' *Nursing Facility Requirements for Licensure and Medicaid Certification Handbook*].

(f) Rural hospital (Medicaid swing bed facility) licensure and certification requirements. Pursuant to Texas Health and Safety Code

§222.024 [§§222.021, 222.024, and 222.025] concerning the duplication of health care inspections and licensing, a rural hospital participating in the Medicaid Swing Bed Program satisfies licensure and certification requirements referenced in this section when it is currently licensed and certified as a hospital [by DSHS]. However, in accordance with Texas Human Resources Code, §32.024, if the rural hospital's swing beds are used for more than one 30-day length of stay per year, per resident the hospital must comply with the full Nursing Facility Requirements.

(g) Rural hospital (Medicaid swing bed facility) administrator. The governing body of a rural hospital participating in the Medicaid Swing Bed Program satisfies the requirement to appoint a qualified full-time nursing facility administrator, found at §554.1902(b) [§19.1902(b)] of this chapter [title] (relating to Governing Body), when it appoints a hospital administrator as its official representative and designates the administrator's responsibilities and authority, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, the hospital's governing body must appoint a full-time licensed nursing facility administrator.

(h) Rural hospital (Medicaid swing bed facility) staff development requirements. A rural hospital participating in the Medicaid Swing Bed Program satisfies the staff development requirements found at §554.1929 [§19.1929] of this chapter [title] (relating to Staff Development) if the swing beds are used for no more than one 30-day length of stay per year, per resident.

(i) Rural hospital (Medicaid swing bed facility) transfer agreement. A rural hospital participating in the Medicaid Swing Bed Program is not required to have a transfer agreement with another hospital, as required by §554.1915 [§19.1915] of this chapter [title] (relating to Transfer Agreement).

(j) Rural hospital geographic region. The phrase "a participating rural hospital's geographic region" refers to an area that includes nursing facilities with which the hospital normally arranges transfers and all other nursing facilities in similar proximity to the hospital. If a hospital has no previous transfer practices on which to base a determination, the phrase "geographic region" refers to an area that includes all nursing facilities within 50 miles of the hospital except for facilities that the hospital demonstrates to be inaccessible to its patients.

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CHAPTER 967. STATE SUPPORTED LIVING CENTER INDEPENDENT MORTALITY REVIEW

26 TAC §967.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §967.1, concerning Independent Mortality Review.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Texas Government Code §531.851(d), which requires HHSC to identify the manner in which the state supported living centers (SSLCs) must report the death of an individual served to the independent mortality review organization contracted pursuant to §531.851(c) to conduct an independent mortality review. Additionally, this proposal places HHSC rules in Title 26 and the repeal of Texas Administrative Code (TAC) Title 40, Chapter 3, Subchapter E, concerning Death of an Individual, is being simultaneously proposed in this issue of the *Texas Register*.

SECTION-BY-SECTION

Proposed new §967.1, concerning Independent Mortality Review, describes the timeframe the SSLC must follow when there is a death of a person with an intellectual or developmental disability in a SSLC.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect the 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 rules.

PUBLIC BENEFIT AND COSTS

Laura Cazabon-Braly, SSLCs Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved care of the individuals served at SSLCs.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to HHSC.

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 HHSC, Texas Health and Specialty Care System, Mail Code E-619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 22R029" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.851(d) which requires the adoption of rules regarding the manner in which the death of an individual served by an SSLC must be reported to the contracted organization to conducting independent mortality reviews.

The new section affects Texas Government Code §531.0055 and §531.851(d).

§967.1. *Independent Mortality Review.*

The Texas Health and Human Services Commission contracts with an independent mortality review organization pursuant to Texas Government Code §531.851(c). A state supported living center (SSLC) must report the death of a person with an intellectual or developmental disability who, at the time of the person's death or at any time during the 24-hour period before the person's death, resided in or received services from the SSLC. The death must be reported to the independent mortality review organization within 72 hours after the pronouncement of death.

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 July 25, 2022.

TRD-202202778

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 438-3049



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER C. PROCUREMENT

METHODS AND CONTRACT FORMATION

DIVISION 2. PROCUREMENT METHODS

34 TAC §20.222

The Comptroller of Public Accounts proposes new §20.222, concerning methods for procuring automated information systems, including request for offers method. The new section will reside in Chapter 20 (Statewide Procurement and Support Services), Subchapter C (Procurement Methods and Contract Formation), Division 2 (Procurement Methods). New §20.222 will replace §20.391, concerning request for offers purchase method, which the comptroller will propose for repeal in a separate proposal.

New §20.222 tracks §20.391 but with improved syntax and style that mirrors that of the other subchapters in Chapter 20 and results in a more readable rule.

Subsection (a) provides that with some exceptions state agencies must purchase from Department of Information Resources (DIR) cooperative contracts those automated information systems that are designated as commodity items by Government Code, §2157.068. "Automated information system" and "commodity items" are defined in Government Code, §2157.001, and Government Code, §2157.068, respectively.

Subsection (b) identifies the circumstances when a state agency is not required to use DIR cooperative contracts to purchase a commodity item.

Subsection (c) designates the request for offers method as the primary purchasing method for procuring automated information systems but provides that state agencies may use the request for offers method, or any other purchasing method designated by the comptroller to obtain best value for the state, to purchase automated information systems.

Subsection (d) requires that the procurement of automated information systems must comply with the State of Texas Procurement and Contract Management Guide.

Subsection (e) states that the determination of best value for the purchase of an automated information system is governed by Government Code, §2157.003.

Subsection (f) identifies the minimum elements that comprise the request for offers method.

Subsection (g) states that a qualified vendor for purposes of new §20.222 is a vendor that meets the minimum requirements of

the request for offers and is capable of providing the needed automated information system.

Subsection (h) stipulates language that a state agency must include in its request for offers method if the state agency believes that the needed automated information system may be proprietary to one vendor under Government Code, §2155.067.

Subsection (i) states that a state agency does not need approval from the comptroller to use the request for offers method.

Subsection (j) provides that the request for offers method permits negotiation of contracts, including negotiation of price.

Subsection (k) clarifies that state agencies or local governments may use the request for offers method for the purchase of goods or services other than automated information systems if doing so will obtain best value for the state agency or local government.

There are several substantive differences between §20.391 and new §20.222. For example, new §20.222 does not include outdated references to Texas Procurement and Support Services nor to the catalog purchase method repealed in 2007. In addition, new §20.222 does not include a requirement that the Division work with the Department of Information Resources to clarify how agencies can identify which NIGP codes are information technology commodities or automated information systems and to post such information on the Division's website. This work will continue as before but without promulgation in agency regulation. Also, new §20.222 does not include a statement that local governments may use the request for offers purchase method because that is simply a restatement of Government Code, §2157.006(b).

Finally, new §20.222 does not include recommendations (as currently found in §20.391(d)) to qualified vendors to maintain current registrations on the centralized master bidders list to receive notices of issuance of solicitations because agency rulemaking is not an appropriate vehicle for making such recommendations.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the 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 rule's 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 improving the clarity of the Rule and the administration of statewide procurement and support services. There would be no significant anticipated economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the new rule. There is no physical location for this meeting. The meeting will be held at 10:00 a.m. on Tuesday, August 30, 2022. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m12b07bbec1be4c4a2b8026cb9f176c79>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 075 6884. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Ger-

ard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by Monday, August 29, 2022.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: Tosca.McCormick@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 section is proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2155; Government Code, §2157.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2157; and Government Code, §2157.006(c), which requires the comptroller to adopt rules for designating purchasing methods under Government Code, §2157.006(a)(2).

The new section implements Government Code, §§2155.062, 2157.006, and 2157.068.

§20.222. *Methods for Procuring Automated Information Systems, including Request for Offers Method.*

(a) Except as provided for in subsection (b) of this section, state agencies must purchase from Department of Information Resources (DIR) cooperative contracts those automated information systems that are designated as commodity items by Government Code, §2157.068.

(b) A state agency is not required to use DIR cooperative contracts to purchase a commodity item if:

(1) the state agency has obtained an exemption from DIR for the purchase of the commodity item;

(2) DIR has certified in writing that the commodity item is not available for purchase under an existing DIR cooperative contract;

(3) the state agency has obtained approval from the Legislative Budget Board under Government Code, §2157.068(f), for the purchase of the commodity item;

(4) the contract for the commodity item is valued at more than \$5 million; or

(5) the state agency is otherwise exempt from Government Code, §2157.068.

(c) The comptroller designates the request for offers method as the primary purchasing method for procuring automated information systems, including commodity items not procured through DIR. However, state agencies may use the request for offers method, or any other purchasing method designated by the comptroller to obtain best value for the state, to purchase automated information systems.

(d) The procurement of automated information systems must comply with the procurement manual and contract management guide described in §20.131 of this title (relating to Procurement Manual and Contract Management Guide).

(e) The determination of best value for the purchase of an automated information system is governed by Government Code, §2157.003.

(f) The request for offers method is a direct purchase or lease method that contains, at a minimum, the following:

(1) publication of an open and competitive solicitation, in writing, seeking request for offers for the needed automated information system;

(2) evaluation of written offers received from qualified vendors as defined in subsection (g) of this section;

(3) disqualification of offers from vendors that do not meet the minimum requirements of the request for offer or that are not capable of providing the needed automated information system; and

(4) award to the qualified vendor providing best value to the state.

(g) A qualified vendor for purposes of this section is a vendor that meets the minimum requirements of the request for offers and is capable of providing the needed automated information system.

(h) If a state agency believes that the needed automated information system may be proprietary to one vendor under Government Code, §2155.067, it shall include the following statement in bold and prominent type at the beginning of the request for offer: "Although the requested items in this request for offers appear to be proprietary to one vendor under Government Code, §2155.067, all qualified respondents that may be able to provide the requested items are encouraged to submit offers."

(i) A state agency does not need approval from the comptroller to use the request for offers method.

(j) The request for offers method permits negotiation of contracts, including negotiation of price.

(k) State agencies or local governments may use the request for offers method described in this section for the purchase of goods or services other than automated information systems if doing so will obtain best value for the state agency or local government.

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 July 25, 2022.

TRD-202202777

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 475-2220



SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

34 TAC §20.381

The Comptroller of Public Accounts proposes to amend §20.381, concerning mail and messenger services.

This amendment provides that mail equipment or private entity service contracts \$10,000 in value are subject to the same requirements as those under \$10,000 in value. Under current §20.381(f)(1), for mail equipment or private entity service contracts under \$10,000, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received. Likewise, the current §20.381(f)(2) provides that for mail equipment or private service contracts over \$10,000, a state agency shall

submit a detailed life-cycle cost benefit analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. However, §20.381(f) does not currently prescribe the information a state agency must submit to the comptroller for mail equipment or private entity service contracts that are precisely \$10,000. The amendment provides that, for mail equipment or private entity service contracts \$10,000 and under, a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

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 have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by improving the clarity of the Rule and the administration of state support services. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed amendment. There is no physical location for this meeting. The meeting will be held at 10:00 am on Tuesday, August 30, 2022. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m12b07bbec1be4c4a2b8026cb9f176c79>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 075 6884. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by Monday, August 29, 2022.

Comments on the proposal may be submitted to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: Tosca.McCormick@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 rule amendment is proposed under Government Code, §2176.110, which requires the comptroller to adopt rules for state agencies to implement Government Code, Chapter 2176.

The amendment implements Government Code, §2176.003 and §2176.104.

§20.381. Mail and Messenger Services.

(a) The comptroller provides and operates an interagency mail and messenger service to deliver unstamped or non-metered written communications and packages between the legislature, state agencies and legislative agencies located in Travis County.

(b) No personal mail will be carried by the mail and messenger service. No package that exceeds 70 pounds will be delivered by the mail and messenger service.

(c) State warrants may be delivered by the mail and messenger service upon agreement by the state comptroller and the agency concerned.

(d) Mail may be delivered to and from the United States Post Office upon the agreement of the state agency and the comptroller.

(e) The mail and messenger service may process and meter outgoing mail for state agencies upon agreement of the state agency and the comptroller. Each state agency must furnish funds to cover amounts of postage to be metered.

(1) No mail shall be metered for a state agency in excess of funds provided by the agency, unless approved by the comptroller so as to avoid undue delays in processing mail. Any deficit in an agency's postage account shall be promptly reimbursed to the comptroller.

(2) The mail and messenger service will provide each state agency utilizing the metered mail service with a monthly report showing the amounts of postage used and volume of mail metered.

(3) State agencies who use the comptroller's outgoing mail service for the purpose of postage meter rental requirements and cost effective mailing requirements will be considered to be in compliance with Government Code, Chapter 2176 and Government Code, §2113.103.

(f) A state agency located in Travis County is required to consult with the comptroller before renting, purchasing, upgrading, or selling mail processing equipment; contracting with a private entity for mail processing services; or taking any action that will significantly affect the agency's first class mail practices.

(1) For mail equipment or private entity service contracts \$10,000 and under [~~\$10,000~~], a state agency shall submit a written justification to the comptroller stating why the equipment or service is needed and what benefits are expected to be received.

(2) For mail equipment or private service contracts over \$10,000, a state agency shall submit a detailed life-cycle cost benefit analysis to the comptroller that includes all expected costs and benefits over the life of the equipment or service. The analysis shall be in a format prescribed by the comptroller.

(3) For any action that will significantly affect its first class mail practices, a state agency shall provide a written statement of the need for the action and anticipated benefits. Significant actions affecting the first class mail practices of an agency include, but are not limited to, the following:

(A) creation or elimination of internal mail processing functions, organization, or staff; and

(B) addition or elimination of any specific mail processing activities such as metering, presorting, folding/inserting, or labeling.

(4) The comptroller shall provide a written response to the state agency indicating whether or not it agrees with the intended action and any suggested alternatives.

(g) The comptroller establishes statewide term contracts for postage meter machine rentals when in the best interest of the state. Postage for statewide term contracts is purchased separately by state agencies and cooperative purchasing members. State agencies may pay for postage in accordance with the requirements of United States Postal Service Domestic Mail Manual.

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 July 25, 2022.

TRD-202202775

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 475-2220



SUBCHAPTER H. PURCHASE METHODS

34 TAC §20.391

The Comptroller of Public Accounts proposes the repeal of §20.391, concerning request for offers purchase method. In a separate proposal, updated language from §20.391 will be included in new §20.222, concerning methods for procuring automated information systems, including request for offers method. Also, because §20.391 is the sole section that resides in Subchapter H of Chapter 20, the comptroller proposes the repeal of Subchapter H.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: 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 rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the clarity and organization of the rules. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

A public hearing will be held to receive comments on the proposed repeal. There is no physical location for this meeting. The meeting will be held at 10:00 a.m. on Tuesday, August 30, 2022. To access the online public meeting by web browser, please enter the following URL into your browser: <https://txcpa.webex.com/txcpa/j.php?MTID=m12b07bbec1be4c4a2b8026cb9f176c79>. To join the meeting by computer or cell phone using the Webex app, use the access code 2499 075 6884. Persons interested in providing comments at the public hearing may contact Mr. Gerard MacCrossan, Comptroller of Public Accounts, at Gerard.MacCrossan@cpa.texas.gov or by calling (512) 463-4468 by Monday, August 29, 2022.

You may submit written comments on the proposal to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13186, Austin, Texas 78701-3186 or to the email address: Tosca.McCormick@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 repeal is proposed under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2155, and Government Code

§2157.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2157.

This repeal implements Government Code, §2155.0012 and §2157.0012.

§20.391. *Request for Offers Purchase Method.*

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 July 25, 2022.

TRD-202202774

Don Neal

General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 475-2220



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

SUBCHAPTER E. DEATH OF AN INDIVIDUAL 40 TAC §§3.501 - 3.506, 3.508, 3.509

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Texas Administrative Code (TAC) Title 40, Part 1, and will be repealed or administratively transferred to 26 TAC, Health and Human Services, as appropriate. Until such action is taken, the rules in 40 TAC Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in 40 TAC Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of 40 TAC Chapter 3, Subchapter E, concerning Death of an Individual, which comprises §§3.501, concerning Discovery, 3.502, concerning Reporting and Notification, 3.503, concerning Medical Certification of Death and Autopsies, 3.504, concerning Disposition, 3.505, concerning Clinical Death Review, 3.506, concerning Administrative Death Review, 3.508, concerning State Office Mortality Review, and 3.509, concerning Independent Mortality Review.

BACKGROUND AND PURPOSE

The proposal is necessary to facilitate updates to internal operating procedures for which there are no statutory requirements for adoption in the TAC by repealing the rules in Title 40, Chapter 3, Subchapter E, concerning Death of an Individual. While the state supported living centers (SSLCs) will continue to conduct both facility-level and state office-level reviews of the deaths of

individuals served, the adoption of these procedures in the TAC impedes the SSLCs' ability to make necessary and timely updates to the procedures. This proposal also complies with Texas Government Code §531.851(d), which requires HHSC to identify the manner in which the SSLCs must report the death of an individual served to the independent mortality review organization contracted pursuant to Section 531.851(c) to conduct an independent mortality review. This independent mortality review is in addition to the reviews conducted at the facility and state office levels. This proposal repeals HHSC rules in Title 40 and a new rule is proposed in 26 TAC 967, concerning State Supported Living Center Independent Mortality Review, which is being simultaneously proposed in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed repeal of Chapter 3, Subchapter E, concerning Death of an Individual, is necessary to facilitate updates to internal operating procedures for which there are no statutory requirements for adoption.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the repeals do 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 repeals will be in effect:

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The repeals do not apply to small or micro-businesses or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect the local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Laura Cazabon-Braly, SSLCs Associate Commissioner, has determined that for each year of the first five years the repeals

are in effect, the public benefit will be more timely adoption by the SSLCs of evolving standards and practices related to the death review procedures resulting in improved care of individuals served in SSLCs.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeals apply only to HHSC.

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 HHSC, Health and Specialty Care System, Mail Code E-619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R029" in the subject line.

STATUTORY AUTHORITY

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

services by the health and human services agencies, and §531.851(d), which requires the adoption of rules regarding the manner in which the death of an individual served by the SSLC must be reported to the contracted organization conducting independent mortality reviews.

The repeals affect Texas Government Code §531.0055 and §531.851(d).

§3.501. *Discovery.*

§3.502. *Reporting and Notification.*

§3.503. *Medical Certification of Death and Autopsies.*

§3.504. *Disposition.*

§3.505. *Clinical Death Review.*

§3.506. *Administrative Death Review.*

§3.508. *State Office Mortality Review.*

§3.509. *Independent Mortality Review.*

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 July 25, 2022.

TRD-202202776

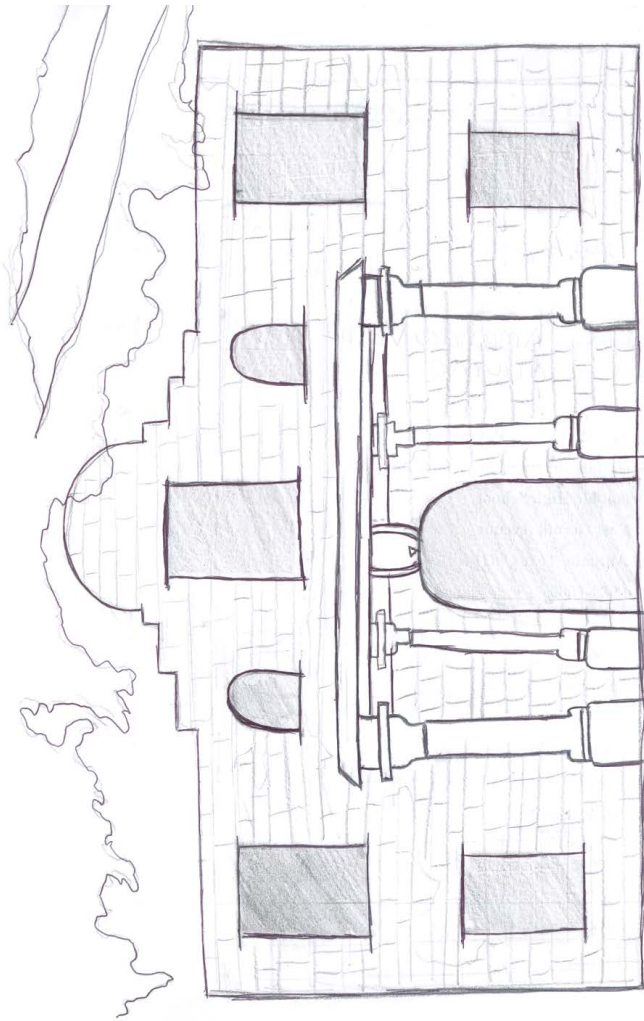
Karen Ray
Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 4, 2022

For further information, please call: (512) 438-3049





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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1017

The Texas Education Agency (TEA) adopts the repeal of §61.1017, concerning alternative compensatory education allotment calculation. The repeal is adopted without changes to the proposed text as published in the April 29, 2022 issue of the *Texas Register* (47 TexReg 2409) and will not be republished. The adopted repeal implements House Bill (HB) 3, 86th Texas Legislature, Regular Session, 2019, which modified the ways students are included in and generate funding for the state compensatory education allotment.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, Regular Session, 2019, redesignated Texas Education Code, §42.152, as §48.104 and amended the statute to change the ways students are included in and generate funding for the state compensatory education allotment.

Section 61.1027, Report on the Number of Educationally Disadvantaged Students for Calculating the Compensatory Education Allotment, was amended effective April 19, 2022, to address the legislative changes of HB 3 that reflect the ways in which students are included in and generate funding for the state compensatory funding allotment. Therefore, §61.1017 is no longer necessary.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 29, 2022, and ended May 31, 2022. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code, §42.152, redesignated as §48.104 and amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019, which allows the commissioner of education to adopt rules for the administration of that section, including the calculation of the number of educationally disadvantaged students.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §42.152, redesignated as §48.104 and amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019.

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 July 20, 2022.

TRD-202202730

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 5, 2022, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning the accountability rating system. The amendment is adopted with changes to the proposed text as published in the May 13, 2022 issue of the *Texas Register* (47 TexReg 2822) and will be republished. The amendment adopts in rule applicable excerpts of the 2022 Accountability Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the 2022 *Accountability Manual* into rule as a figure. The excerpts, Chapters 1-11 of the 2022 *Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code, §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered are updated to align with 2022 accountability. All references to English learners (ELs) are updated to emergent bilingual (EB) students/ELs to align with updated state statute and federal reporting requirements.

Chapter 1 gives an overview of the entire accountability system. Language referring to the Not Rated: Declared State of Disaster label that was applied in 2021 is removed as well as language about Academic Growth not being calculated. Language indicating that single-campus districts must meet performance targets required for the campus to demonstrate acceptable performance is removed. Rating labels D and F are removed and replaced with Not Rated: Senate Bill 1365. Clarifying language about membership being the basis for accountability calculations is added. Language is added regarding the inclusion of students receiving instruction virtually. The summer 2021 State of Texas Assessments of Academic Readiness (STAAR®) administration is added to the chart depicting the accountability subset rule as well as in the descriptive bullets below the chart. Language about Not Rated: Data Integrity Issues potentially being assigned temporarily is removed as this would be a permanent label and Not Rated: Data Under Review is added as a potential temporary label. The provision allowing a district to retest students who achieve Approaches Grade Level on an English I or Algebra I end-of-course (EOC) is removed.

Chapter 2 describes the "Student Achievement" domain. Language indicating scaled scores would not be calculated is removed. References to the Every Student Succeeds Act (ESSA) addendum is removed. The new version of the Texas Success Initiative assessment (TSIA2) is added as a means to meet TSI criteria. The writing column is removed from the STAAR® component example chart. The Student Achievement Domain Rating Calculation section is added.

Chapter 3 describes the "School Progress" domain. Language indicating raw scores and scaled scores would not be calculated is removed. All language about the Academic Growth calculation is added and is unchanged from the *2020 Accountability Manual* besides the small numbers analysis language which indicates that it is not used. Language about the ESSA waiver request is removed. Small numbers analysis language is updated to note that it is not applied to the Relative Performance domain.

Chapter 4 describes the "Closing the Gaps" domain. Language indicating raw scores and scaled scores would not be calculated is removed. All language about the Academic Growth calculation is added and is unchanged from the *2020 Accountability Manual* besides the small numbers analysis language, which indicates that it is not used. Language about the use of the 2020 optional Texas English Language Proficiency Assessment System is moved to the "English Language Proficiency-Methodology" section. Language noting that TEA requested an extension for the participation rate requirements under ESSA is added. The "Limits on Use of Alternative Assessments" section is removed. The weights applied to each component, calculation examples, and additional calculation details are added.

Chapter 5 describes how the overall ratings are calculated. Language about how ratings are calculated is added and is unchanged from the *2020 Accountability Manual* other than references to D/F ratings. Any previous reference to D/F ratings is replaced with a Not Rated: Senate Bill 1365 label or a scaled score.

Chapter 6 describes distinction designations. Language about the appeals process is added and is unchanged from the *2020 Accountability Manual* with the following exceptions: eligibility requirements is updated to align with current statute; all references to the writing STAAR® are removed; an SAT/ACT Results for Accelerated Testers indicator is added; and clarifying language is added to the Postsecondary Readiness distinction designation description. Language describing the Career and Technical Education (CTE) indicator is removed, and language about the inclusion of the TSIA2 is added.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. Language describing Alternative Education Campuses of Choice is removed, and a description of the Dropout Recovery School (DRS) discretionary designation application process is added. Language about the DRS identification process is updated to align with statutory changes.

Chapter 8 describes the process for appealing ratings. Language about the appeals process is added and is unchanged from the *2020 Accountability Manual* with the following exceptions: language about the option to appeal consecutive years of unacceptable performance is added; and references to the Covid-19 pandemic and its impact on accountability ratings is removed, as well as language about the Student Success Initiative STAAR® administration and the writing STAAR® administration. Language describing the order in which appeals would be processed is removed.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. The "Determination of Multiple Year Unacceptable Status" section is replaced with "Determination of Count of Consecutive School Years of Unacceptable Performance Ratings," and the description below the section title is updated to align with current statute. Language is added about the impact of overall D ratings to align with statutory requirements. The Acceptable and Not Rated: Declared State of Disaster rating labels are added as well as the Not Rated: Senate Bill 1365 label to be applied to districts and campuses that would have received a D/F rating in 2022. Language is added indicating that PEG campuses are identified based on an overall scaled score less than 60. The Campus Identification Numbers is updated to align with current procedures.

Chapter 10 provides information on the federally required identification of schools for improvement. Language about the 2021 ESSA waiver is moved to the end of the chapter. The identification and exit criteria for comprehensive support and improvement, targeted support and improvement, and additional targeted support are added.

Chapter 11 describes the local accountability system (LAS). References to the application of a Not Rated: Declared State of Disaster rating label are removed. Language is added noting that LAS ratings are only applied if the state rating is a C or better. A section describing the appeals process is added.

Changes were made to the manual since published as proposed. The adopted manual includes the following changes either to provide clarification or in response to public comment.

Chapter 1 was revised in response to public comment to clarify the processing of retests and SAT/ACT results for accelerated testers and to clarify test security information. The school types

chart and the corresponding example were also updated to reflect 2022 data.

Chapter 2 was revised in response to public comment to clarify how EB students/ELs are determined. Language about SAT/ACT inclusion was revised to provide clarity. A table header was added to note an example, and a reference to an appendix was added to the College, Career, and Military Readiness (CCMR) Industry-Based Certification (IBC) description.

Chapter 3 was revised in response to public comment to clarify how EB students/ELs are determined and an example image describing Part B: Relative Performance was added.

Chapter 4 was updated in response to public comment to clarify how demographic information is determined. Clarifying language was added to the description of the English Language Proficiency denominator as well as the TSI component description. A reference to an appendix was added to the CCMR IBC description. Academic growth targets were added as well as long-term targets for the graduation rate component. Language was also added as the U.S. Department of Education did not grant the 95 percent participation waiver request.

Chapter 6 was updated in response to public comment to clarify that only campuses and districts rated A, B, or C are eligible for distinction designations.

Chapter 8 was updated in response to public comment to remove the TSI Data language under the Special Circumstances Appeals section.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 13, 2022, and ended June 13, 2022. A public hearing on the proposal was held on May 18, 2022. Following is a summary of the public comments received and the corresponding agency responses.

Comment. The Texas School Alliance (TSA) commented in support of the decision to assign a label of Not Rated: Senate Bill 1365 to campuses and school districts that do not meet the 2022 performance targets to receive a C rating.

Response. The agency agrees. Senate Bill (SB) 1365 mandates the assignment of a Not Rated label to any school district or campus that does not earn at least a C rating for 2022.

Comment. One school district staff member and Lead4Ward requested an accountability subset chart from the 2019 Frequently Asked Questions site be added to Chapter 1.

Response. The agency agrees that the chart should be made available. The requested chart will be updated and provided on the 2022 Frequently Asked Questions website.

Comment. One education service center (ESC) staff member, Lead4Ward, and one school district staff member commented on the retest language in Chapter 1. The ESC staff member commented that the manual says the single best score is selected, but as soon as the student passes, that would be the score that is included. The school district staff member commented that the term "both" is confusing when there are three opportunities, and the tables on the next page do not account for summer testers.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was modified to update retest processing language.

Comment. Lead4Ward commented that the School Types chart in Chapter 1 contains campus counts from the 2020-2021 school year and inquired if the chart would be updated upon adoption.

Response. The agency provides the following clarification. The 2021-2022 data for the School Types chart were unavailable at proposal. At adoption, Figure: 19 TAC §97.1001(b) was modified to update the School Types chart.

Comment. One ESC staff member asked what happens if SAT/ACT performance for accelerated testers is lower than the Approaches Grade Level cut score.

Response. The agency provides the following clarification. The student's result would be included in the denominator but not in the numerator.

Comment. One school district staff member proposed the SAT/ACT performance standards for accelerated testers should be reset to align with STAAR® Algebra I outcomes.

Response. The agency provides the following clarification. The Meets Grade Level cut points were set to align with existing College Board standards that demonstrate that students who meet or exceed the benchmark have a substantial chance of earning at least a C in first-semester college classes. This aligns closely with the vertically aligned Meets Grade Level cut points established in 2012, which linked Meets Grade Level Outcomes to SAT outcomes associated with a 60% chance of passing freshman level college courses.

Comment. TSA recommended that the TEA collaborate with the College Board to create an SAT Science subscore based on SAT Reading/Math subject tests for inclusion in the assessment evaluated chart shown on page 14 and/or include the SAT Biology subject test as an additional substitute assessment option for accelerated testers who took the Biology EOC in middle school.

Response. The agency disagrees and provides the following clarification. The agency has collaborated with the College Board concerning an SAT Science outcome that could potentially be included in future accountability cycles. Prior to potential implementation, cut points equating Approaches Grade Level, Meets Grade Level, and master's Grade Level performance for SAT Science outcomes must be established. Due to the small set of science-related questions, setting such cut points has not been possible.

Comment. One citizen commented that due to COVID-19-related policy changes, many students are not taking SAT/ACT assessments. The commenter requested that ACT/SAT results be excluded from the STAAR® components or, if a large portion of the accelerated testers in a school or district did not take the ACT/SAT, to exclude the ACT/SAT test results for that school or district.

Response. The agency disagrees. TEA does not have the authority to waive the federal testing requirements for accelerated testers.

Comment. Lead4Ward commented that the language describing accountability subset and campus of inclusion for SAT/ACT results of accelerated testers is confusing.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was modified to update SAT/ACT inclusion language.

Comment. Lead4Ward noted that the English Learner Performance Measure is inconsistently referenced in Chapter 2 of the proposal and should be updated to a consistent referenced throughout the manual.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was modified to update English Learner Performance Measure references.

Comment. One ESC staff member asked whether the state still has students that would be coded as 04 or 05 graduation plan.

Response. The agency provides the following clarification. Students continue to graduate under 04 and 05 graduation plans.

Comment. One school district staff member commented that CCMR targets were set prior to the removal of the .5 point for CTE coherent sequence course completion. The commenter noted the removal of this way of earning at least a half point lowered CCMR results.

Response. The agency disagrees. CCMR targets were set based on 2017 data, which had fewer CCMR indicators than are currently available. CCMR targets were not adjusted for the years indicators were added.

Comment. One ESC staff member asked whether House Bill 1147 needs to be addressed regarding the Texas National Guard indicator in the CCMR sections.

Response. The agency provides the following clarification. The inclusion of this indicator is pending receipt of Texas National Guard enlistment data.

Comment. One ESC staff member asked, in reference to the special education CCMR indicator, whether the Recommended High School Program (RHSP) and the Distinguished Achievement Program (DAP) graduation plans are still applicable and whether the identification as special education is based on the Public Education Information Management System (PEIMS) fall snapshot date or the summer PEIMS submission.

Response. The agency provides the following clarification. Students continue to graduate under RHSP and DAP graduation plans. If the student is reported in PEIMS attendance (summer submission) as receiving special education services during the year, they are identified as such.

Comment. One ESC staff member asked, in reference to CCMR, if, when calculating the three-year average, the school district's or campus's 2022 graduate data is included.

Response. The agency provides the following clarification. References to 2022 accountability data for graduation and CCMR reflect outcomes for 2021 annual graduates.

Comment. Lead4Ward commented the chart in Chapter 2, page 15 was missing a header row.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to add the header outline.

Comment. One school district staff member requested that TEA maintain the option for AEA campuses to utilize IBCs as a "stand alone" even if, in the future, it is required to be linked to a CTE course for the general accountability system.

Response. The agency provides the following clarification. IBCs earned will credit CCMR one point regardless of program of study completion for 2022. Future use is outside the scope of the proposed rulemaking.

Comment. Lead4Ward commented recommending that a list of IBCs recognized for the 2022 accountability be added as an appendix.

Response. The agency agrees. An "Appendix J: Industry-Based Certifications used for 2022 Accountability" will be provided at the time the amendment to §97.1001 is adopted.

Comment. Lead4Ward commented requesting the Relative Performance example chart from the 2020 manual be added.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to add the Relative Performance example chart.

Comment. The TSA, Lead4Ward, and two school district staff members commented that page 42 of Chapter 4 does not include targets for Academic Growth Status.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to add Academic Growth targets.

Comment. One ESC staff member asked whether long-term targets needed to be included in the targets chart.

Response. The agency agrees and provides the following clarification. Only the graduation rate component methodology relies on the long-term target. At adoption, Figure: 19 TAC §97.1001(b) was modified to add long-term targets to the graduation rate component.

Comment. One school district staff member commented that the minimum size requirements for the Academic Growth Status component within the Closing the Gaps domain should be changed to four rather than five.

Response. The agency disagrees. The Academic Growth Status minimum size requirements have been in place since 2018 and were established based on stakeholder feedback to ensure a representative sample of the campus is evaluated for growth.

Comment. TSA and one school district staff member commented that the minimum size requirements for the Academic Growth Status component within the Closing the Gaps domain are new and should be lowered due to lower participation rates in 2021.

Response. The agency disagrees and provides the following clarification. The Academic Growth Status minimum size requirements have been in place since 2018 and were established based on stakeholder feedback to ensure a representative sample of the campus is evaluated for growth.

Comment. TSA commented that if minimum size requirements for the Academic Growth Status component within the Closing the Gaps domain are not met, the manual does not provide an explanation of the calculation in this scenario.

Response. The agency provides the following clarification. As has been the case since 2018, if a campus does not meet minimum size in a Closing the Gaps component, the weight of the missing component is proportionally distributed to the remaining components. An example is provided on page 41 of the chapter.

Comment. Lead4Ward commented requesting two updates to the CCMR language: first, that the CCMR language in Chapter 4 related to the combination of Texas Success Initiative Assessment 1 (TSIA1) and TSIA2 match the CCMR language in Chapter 2; and second, that a reference to a potentially new IBC appendix be added.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was modified to update CCMR language for both TSIA1/TSIA2 and IBCs.

Comment. Lead4Ward requested clarification on how students are identified as Current or Monitored EB students/ELs.

Response. The agency provides the following clarification. The data saved by school districts in the Test Information Distribution Engine (TIDE) by May 20, 2022, are used to identify EB students/ELs for accountability purposes. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify references throughout related to demographics and TIDE.

Comment. One school district staff member commented that comparing 2018 Texas English Language Proficiency Assessment System (TELPAS) results to 2022 results is concerning.

Response. The agency disagrees. Due to lower TELPAS participation in 2020 and 2021, comparing 2022 results back to 2018 allows TEA to evaluate the progress of more EB students/ELs.

Comment. The Texas Public Charter Schools Association and one school district staff member requested TEA utilize the 2020/2021 hold harmless English language proficiency (ELP) formula for a second consecutive year. The school district staff member requested this extension specifically for DRSs due to very low DRS average daily attendance averages.

Response. The agency disagrees. The 2020 hold harmless provision was implemented as the completion of the TELPAS in 2020 was optional due to statewide shutdowns. The TELPAS was mandatory in 2021. TEA does not have the authority to process ELP differently for DRS without approval from the U.S. Department of Education (USDE).

Comment. Lead4Ward requested clarification on which students were included in the 2022 ELP denominator as the language appears to only include current year Advanced High TELPAS or Basic Fluency TELPAS Alternate composite ratings.

Response. The agency provides the following clarification. In order to be included in the ELP denominator, a student must have either a current year Advanced High TELPAS or a Basic Fluency TELPAS Alternate composite rating or a rating below Advanced High or Basic Fluency plus a prior year non-zero TELPAS or TELPAS Alternate composite rating. At adoption, Figure: 19 TAC §97.1001(b) was modified to update ELP inclusion language.

Comment. Lead4Ward commented proposing an update to the third bullet of the ELP methodology by repeating the statement "does not show progress when compared to the 2022 composite rating progress" from the second bullet.

Response. The agency disagrees. As the second bullet of the ELP methodology already provides this step, TEA does not find it necessary to repeat the statement.

Comment. One school district staff member commented that for clarity, the exclusion of students in year one in U.S. schools should be repeated in the ELP section.

Response. The agency disagrees and provides the following clarification. Under the ESSA, the year one in U.S. schools exclusion applies only to STAAR®-related indicators. This exclusion does not apply to ELP.

Comment. One school district staff member commented that holding campuses and districts to targets that were set prior to the pandemic without any hold harmless or required improvement mitigation is ignoring the impact that the pandemic has had and continues to have on students.

Response. The agency disagrees. Under SB 1365, no school district or campus will receive a D or F in Closing the Gaps, which accounts for such impact.

Comment. One school district staff member requested TEA adjust the CCMR methodology for AEAs to encompass a designated single day during the sixth 6-week attendance cycle to identify those non-graduating Grade 12 students included in the Closing the Gaps the denominator.

Response. The agency disagrees. TEA does not have the authority to process federal CCMR differently for DRS without approval from the USDE.

Comment. Lead4Ward commented proposing that, due to the impact of COVID-19 on the 2020-2021 and 2021-2022 school years, Step 10 in Chapter 5 be removed. The commenter further proposed that, if Step 10 is not deleted in its entirety, it be modified to read, "If the Student Achievement or School Progress, Part A: Academic Growth domain scaled score is 60 or higher, this provision will not be applied."

Response. The agency disagrees. These steps have been in place since 2018 and were established based on stakeholder feedback to ensure overall ratings are reflective of domain ratings. Additionally, SB 1365 mandates the assignment of a Not Rated label to any school district or campus that does not earn at least a C rating for 2022.

Comment. One school district staff member commented in appreciation of the school improvement identification revisions and requested clarification on the comprehensive support and improvement identification, noting that the wording between the identification and exit criteria sections is slightly different.

Response. The agency provides the following clarification. The "lowest percentile" refers to the cut point to identify at least the bottom five percent of Title I, Part A campuses.

Comment. TSA proposed updating the wording in Chapter 8 to permit campuses identified for comprehensive, targeted, or additional targeted support interventions "to appeal the designation if this identification is based on data or calculation errors that are attributable to TEA, an ESC or the testing contractor(s)."

Response. The agency disagrees. The authority to appeal a commissioner decision lies within Texas Education Code, Chapter 39. ESSA does not grant a campus the ability to appeal a federal school improvement identification, nor does ESSA grant the commissioner the authority to grant such an appeal.

Comment. TSA and one school district staff member commented that the comprehensive support and improvement identification methodology should be updated to only identify "up to five percent" of Title I, Part A campuses. The commenters proposed TEA revise the rounding methodology for the Closing the Gaps rating from a whole number to at least one decimal point.

Response. The agency disagrees. ESSA requires the state identify "not less than the lowest-performing five percent" of Title I, Part A campuses. The agency rounds domain ratings to a whole number.

Comment. TSA and one school district staff member commented that the comprehensive support and improvement identification methodology should be updated to only identify "up to five percent" of Title I, Part A campuses. The commenters proposed TEA first re-identify campuses then only identify newly

eligible campuses up to, but not to exceed, five percent and to remove any campus that received a D or higher rating.

Response. The agency disagrees. ESSA requires the state identify "not less than the lowest-performing five percent" of Title I, Part A campuses. The 2022 ESSA amendment revised the identification and re-identification criteria to narrow the identifications to the lowest performing campuses. ESSA does not grant states authority to identify only some of the campuses that meet identification criteria.

Comment. TSA proposed the exit criteria for campuses identified for comprehensive support and improvement in 2018 and 2019 be updated to align with the revised identification criteria.

Response. The agency provides the following clarification. Exit criteria for campuses identified in 2018 have been updated. If an identified campus was not in the bottom five percent of Closing the Gaps in 2019 and meets the new 2022 exit criteria, the campus will be exited. Campuses identified in 2019 are not eligible to exit in 2022 as these campuses will not have two consecutive years of data to evaluate until August 2023.

Comment. One ESC staff member asked whether school districts would know whether the waiver request for participation rates was granted by the USDE prior to ratings.

Response. The agency provides the following clarification. The response from the USDE was shared with school districts on July 8, 2022. The participation waiver request was not granted.

Comment. One ESC staff member asked whether Grades 9 and 10 can be added to Advanced Placement (AP)/International Baccalaureate (IB) participation indicators in distinction designations.

Response. The agency disagrees and provides the following clarification. As the AP/IB denominator includes all students enrolled in those grades, it would significantly decrease percentages. This decision was made by the original distinction designation committee and maintained.

Comment. One ESC staff member asked whether the language referring to TSIA data in the Special Circumstances Appeals section needed to be included as school districts are to provide these data via the CCMR Verifier.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was modified to remove TSIA data in the Special Circumstances Appeals section.

Comment. One ESC staff member commented that the Interventions section discusses that campuses and/or school districts should continue with previously ordered sanctions and interventions. However, the School Improvement Division has indicated that campuses and/or school districts are not required to participate in any interventions.

Response. The agency provides the following clarification. School districts and/or campuses with interventions or sanctions such as a board of managers, monitor/conservator, and/or federal school improvement interventions must continue participation in prescribed actions.

Comment. One ESC staff member asked whether the Not Rated: Senate Bill 1365 label needs to be added to the Interventions section.

Response. The agency provides the following clarification. This language would specifically apply to those campuses with board

of managers, monitor, etc. It would not be for those who were at the lower interventions.

Comment. One school district staff member and Lead4Ward requested clarity on distinction designations, including whether campuses and districts labeled Not Rated: Senate Bill 1365 will be eligible.

Response. The agency provides the following clarification. School districts and campuses that receive a Not Rated label are not eligible for distinction designations. At adoption, Figure: 19 TAC §97.1001(b) was updated to clarify distinction designation eligibility.

Comment. TSA proposed that students who use a substitute assessment to meet state graduation requirements should be included in accountability as participants.

Response. The agency disagrees. As explained in the June 20, 2019 To the Administrator Addressed correspondence, TEA ceased the inclusion of substitute assessment results in accountability in order to meet federal accountability requirements. TEA does not have the authority to waive the federal participation requirements.

Comment. One ESC staff member asked whether SB 1267 needs to be addressed in the Test Security section.

Response. The agency agrees. At adoption, Figure: 19 TAC §97.1001(b) was updated to incorporate revised language concerning test security.

Comment. TSA proposed that STAAR® assessment documents for students who use a substitute assessment to meet state graduation requirements should be coded Other in place of the current guidance of Scored.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner of education to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a Not Rated label to all districts and campuses for 2021-2022 unless the district or campus earns an overall performance rating of C or higher and which maintains student eligibility for the public education grant (PEG) despite an overall Not Rated label; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or

financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the PEG program and eligibility requirements; and TEC, §12.104(b)(3)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); 29.201, 29.202; and 12.104(b)(3)(L).

§97.1001. *Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2022 are based upon specific criteria and calculations, which are described in excerpted sections of the *2022 Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1497



CHAPTER 101. ASSESSMENT

The Texas Education Agency (TEA) adopts amendments to §§101.3022, 101.3024, and 101.4002, concerning implementation of the academic content areas testing program. The amendments are adopted without changes to the proposed text as published in the May 13, 2022 issue of the *Texas Register* (47 TexReg 2825) and will not be republished. The adopted amendments align the rules with House Bill (HB) 1603, 87th Texas Legislature, Regular Session, 2021, which eliminated expiration dates for students to graduate through an Individual Graduation Committee (IGC) under Texas Education Code (TEC), §28.0258; for former students to graduate through a district decision under TEC, §28.02541; and for students to use the Texas Success Initiative Assessment (TSIA) as a substitute assessment to meet assessment graduation requirements under TEC, §39.025.

REASONED JUSTIFICATION: With changes to the TEC introduced by HB 1603, 87th Texas Legislature, Regular Session, 2021, TEA determined that conforming amendments to its assessment rules needed to be made.

Section 101.3022, Assessment Requirements for Graduation, outlines the specific assessment graduation requirements for different groups of students. The adopted amendment aligns the rule with HB 1603 by removing subsection (e)(4), which stated the expiration date for students to receive a high school diploma if the student has qualified to graduate by means of an IGC under TEC, §28.0258. In addition, the term English language learner has been updated to emergent bilingual student to align with Senate Bill 2066, 87th Texas Legislature, Regular Session, 2021.

Section 101.3024, Assessment Requirements for Students First Enrolled in Grade 9 Prior to 2011-2012 School Year or First Enrolled in Grade 10 or Above in 2011-2012 School Year, outlines the specific assessment graduation requirements for former students. The adopted amendment removes subsection (b), as it is no longer applicable since the modified assessments referenced are no longer administered. In addition, the adopted amendment aligns the rule with HB 1603 by removing subsection (g)(2), which stated the expiration date for former students to receive a high school diploma based on a district decision in accordance with TEC, §28.02541.

Section 101.4002, State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments, identifies the provisions for using a substitute assessment to meet graduation requirements. The adopted amendment aligns the rule with HB 1603 by removing subsection (d)(2)(B), which stated the expiration date for the use of the TSIA as a substitute assessment for certain students.

Finally, technical edits related to statutory references have been made to ensure consistency across administrative rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 13, 2022, and ended June 13, 2022. No public comments were received.

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

19 TAC §101.3022, §101.3024

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §28.02541, as amended by House Bill (HB) 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students who entered ninth grade before the 2011-2012 school year to receive a high school diploma through a district decision. HB 1603 removed the expiration date for the provision; TEC, §28.0258, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students to receive a high school diploma on the basis of an Individual Graduation Committee. HB 1603 removed the expiration date for the provision; TEC, §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which establishes the secondary-level performance required to receive a Texas high school diploma. HB 1603 removed the expiration date for TEC, §39.025(a-3), which allows certain students to use the Texas Success Initiative Assessment as a substitute assessment to meet assessment graduation requirements, and TEC, §39.025(a-5), which allows certain students to receive a high school diploma if the student qualified for graduation through an individual graduation committee; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B), which requires the same academic assessments used to measure the achievement of all public elementary and secondary school students in the state to be administered to all public elementary and secondary school students in the state.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.02541, 28.0258, and 39.025, as amended by House Bill 1603, 87th Texas Legislature, Regular Session, 2021; TEC, §39.023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2022.

TRD-202202732

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 9, 2022

Proposal publication date: May 13, 2022

For further information, please call: (512) 475-1497

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SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING SUBSTITUTE ASSESSMENTS FOR GRADUATION

19 TAC §101.4002

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.02541, as amended by House Bill (HB) 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students who entered ninth grade before the 2011-2012 school year to receive a high school diploma through a district decision. HB 1603 removed the expiration date for the provision; TEC, §28.0258, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which allows certain students to receive a high school diploma on the basis of an IGC. HB 1603 removed the expiration date for the provision; TEC, §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, as amended by HB 1603, 87th Texas Legislature, Regular Session, 2021, which establishes the secondary-level performance required to receive a Texas high school diploma. HB 1603 removed the expiration date for TEC, §39.025(a-3), which allows certain students to use the TSIA as a substitute assessment to meet assessment graduation requirements, and TEC, §39.025(a-5), which allows certain students to receive a high school diploma if the student qualified for graduation through an individual graduation committee; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B), which requires the same academic assessments used to measure the achievement of all public elementary and secondary school students in the state to be administered to all public elementary and secondary school students in the state.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§28.02541, 28.0258, and 39.025, as amended by House Bill 1603, 87th Texas Legislature, Regular Session, 2021; TEC, §39.023; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202202735

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 102. EDUCATIONAL PROGRAMS
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS

19 TAC §§102.1011, 102.1013, 102.1015, 102.1017

The Texas Education Agency (TEA) adopts the repeal of §§102.1011, 102.1013, 102.1015, and 102.1017, concerning master teacher grant programs. The repeal is adopted without changes to the proposed text as published in the April 29, 2022 issue of the *Texas Register* (47 TexReg 2412) and will not be republished. The adopted repeal removes the rules because their authorizing statute no longer exists.

REASONED JUSTIFICATION: Under the authority of Texas Education Code (TEC), §§21.410-21.413, the commissioner exercised rulemaking authority to adopt rules to implement the Master Reading, Master Mathematics, Master Science, and Master Technology Teacher Grant Programs through the adoption of §§102.1011, 102.1013, 102.1015, and 102.1017 between 1999 and 2010. These rules implemented grant programs and made grants to school districts to pay stipends to selected certified master reading, mathematics, science, and technology teachers who taught at high-need campuses as identified in rule.

House Bill 3, 86th Texas Legislature, 2019, removed TEC, §§21.410-21.413. The adopted repeal of Chapter 102, Subchapter BB, is necessary since the authorizing statute no longer exists.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 29, 2022, and ended May 31, 2022. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under House Bill 3, §4.001, 86th Texas Legislature, 2019, which repealed Texas Education Code, §§21.410-21.413, which established master teacher grant programs.

CROSS REFERENCE TO STATUTE. The repeal implements House Bill 3, §4.001, 86th Texas Legislature, 2019.

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 July 20, 2022.

TRD-202202728
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 9, 2022
Proposal publication date: April 29, 2022
For further information, please call: (512) 475-1497



SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1053

The Texas Education Agency adopts the repeal of §102.1053, concerning the mathematics instructional coaches pilot program. The repeal is adopted without changes to the proposed text as published in the April 29, 2022 issue of the *Texas Register* (47 TexReg 2413) and will not be republished. The adopted repeal removes the rule because its authority, Texas Education Code (TEC), §21.4541, was repealed by Senate Bill (SB) 1267, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: Under the authority of TEC, §21.4541, the commissioner exercised rulemaking authority to adopt rules to implement the Mathematics Instructional Coaches Pilot Program through the adoption of §102.1053. This rule established and implemented the pilot program to provide grants to participating school districts for teachers who instruct mathematics at the middle, junior high, or high school levels.

SB 1267, 87th Texas Legislature, Regular Session, 2021, removed TEC, §21.4541. The adopted repeal of §102.1053 is necessary since the authorizing statute no longer exists.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 29, 2022, and ended May 31, 2022. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under Senate Bill 1267, §24, 87th Texas Legislature, Regular Session, 2021, which repealed Texas Education Code, §21.4541, which required the commissioner to establish and implement a Mathematics Instructional Coaches Pilot Program.

CROSS REFERENCE TO STATUTE. The repeal implements Senate Bill 1267, §24, 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 July 20, 2022.

TRD-202202729
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 9, 2022
Proposal publication date: April 29, 2022
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.11

The Texas Board of Nursing (Board) adopts new §211.11, relating to Employee Leave Pools, without changes to the proposed text published in the June 17, 2022, edition of the *Texas Register* (47 TexReg 3524) and will not be republished.

Reasoned Justification. The new section is being adopted under the authority of the Government Code Chapter 661 and is necessary to implement the statutory requirements of that chapter. Pursuant to §661.002(a), the governing body of a state agency, through the establishment of a program, must allow an agency employee to voluntarily transfer to a sick leave pool sick leave earned by the employee. Section 661.002(b) and (c) require agencies to administer a sick leave pool and adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. Section 661.004 provides that an agency employee may use time contributed to an agency sick leave pool if the employee has exhausted the employee's sick leave because of a catastrophic illness or injury or a previous donation of time to

the pool. Adopted new §211.11(a) establishes the Board's sick leave pool pursuant to these statutory directives.

Pursuant to §661.022(a), the governing body of a state agency, through the establishment of a program, must allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool. Section 661.022(b) and (c) require agencies to administer a family leave pool and adopt rules and prescribe procedures relating to the operation of the agency family leave pool. Section 661.021 provides that the purpose of the state employee family leave program is to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic; and allow employees to apply for leave time under the family leave pool. Adopted new §211.11(b) establishes the Board's family leave pool pursuant to these statutory directives.

The remainder of the adopted new section designates the Sick and Family Leave Pool Administrator for the Board; requires policies and procedures to effectuate the operation of the pools; and clarifies that all employee donations to the Board's sick and family leave pools will be voluntary only and in writing.

How the Section Will Function.

Adopted §211.11(a) provides that the Board's sick leave pool is established to allow eligible state employees to use time contributed to the sick leave pool if the employee has exhausted the employee's sick leave because of a catastrophic illness or injury or a previous donation of time to the pool. Adopted §211.11(b) provides that the Board's family leave pool is established to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement and for caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic. Adopted §211.11(c) states that the Human Resources Director or other employee designated by the Executive Director will act as the Board's Sick Leave Pool and Family Leave Pool Administrator. Adopted §211.11(d) states that the Board's Sick Leave Pool and Family Leave Pool Administrator, with the approval of the Executive Director, will prescribe and implement policies to effectuate the operation of the pools. Further, the policies and procedures must be consistent with the provisions of Chapter 661 and will be included in the Board's Employee Handbook. Finally, adopted §211.11(e) provides that employee donations to the Board's sick leave pool and family leave pool are strictly voluntary and must be made in writing.

Public Comment. The Board did not receive any comments on the proposal.

Statutory Authority. The new section is adopted under the authority of the Government Code Chapter 661 and the Occupations Code §301.151. Chapter 661 prescribes the statutory mandates applicable to sick and family leave pools, including mandates for agency rulemaking. Section §301.151 addresses the Board's general rulemaking authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 19, 2022.

TRD-202202712

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 8, 2022

Proposal publication date: June 17, 2022

For further information, please call: (512) 305-6822

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**PART 22. TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY**

**CHAPTER 501. RULES OF PROFESSIONAL
CONDUCT**

**SUBCHAPTER E. RESPONSIBILITIES TO
THE BOARD/PROFESSION**

22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90, concerning Discreditable Acts, without changes to the proposed text as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3221). The rule will not be republished.

The rule lists the Texas State Treasurer, which is a state agency that no longer exists. The amendment deletes the reference to that state agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 21, 2022.

TRD-202202763

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 10, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 305-7842

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**CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATIONAL
REQUIREMENTS**

22 TAC §511.59

The Texas State Board of Public Accountancy adopts an amendment to §511.59, concerning Definition of 150 Semester Hours, without changes to the proposed text as published in the June 3,

2022 issue of the *Texas Register* (47 TexReg 3223) and will not be republished.

The amendment identifies the nine total semester credit hours of undergraduate or graduate independent study course and/or internships to be considered as academic coursework necessary to be eligible to take the UCPAE and removes language in order to broaden the ability of the Board to approve vocational, career or faith-based courses approved by accredited higher education colleges and universities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 21, 2022.

TRD-202202764

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 10, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 305-7842



CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.9

The Texas State Board of Public Accountancy adopts an amendment to §519.9, concerning Administrative Penalty Guidelines, without changes to the proposed text as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3224) and will not be republished.

The rule graphic lists the Texas State Treasurer which is a state agency that no longer exists. The amendment deletes the reference to that state agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 21, 2022.

TRD-202202765

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 10, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 305-7842



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

The Commissioner of Insurance adopts the repeal of 28 TAC §§1.902, 1.904, and 1.906 - 1.911; the amended subchapter title for 28 TAC Chapter 1, Subchapter H; and amendments to 28 TAC §§1.901, 1.903, and 1.905, concerning emergency cease and desist orders. The Commissioner adopts the amended subchapter title for 28 TAC Chapter 1, Subchapter H; the repeal of §§1.902, 1.904, 1.906 - 1.911; and the amendments to §1.901 without changes to the proposed text and will not be republished. The amendments to §1.903 and §1.905 are adopted with non-substantive changes to the proposed text, which was published in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2107). These rules will be republished. The Texas Department of Insurance (TDI) revised §1.903 to correct a grammatical error and §1.905 to clarify a reference to TDI.

REASONED JUSTIFICATION. The amendments to §§1.901, 1.903, and 1.905 and repeal of §§1.902, 1.904, and 1.906 - 1.911 are necessary to implement §§3 - 5 of Senate Bill 1809, 87th Legislature, 2021, and House Bill 1461, 73rd Legislature, 1993.

As it relates to emergency cease and desist orders, SB 1809 (1) establishes different criteria for issuing orders against authorized and unauthorized persons, (2) extends the deadline to the 60th day after the order is served for an affected person to request a hearing, (3) requires TDI to docket the case with the State Office of Administrative Hearings within 30 days of receiving the hearing request, and (4) requires the person requesting the hearing to show why the order should not be affirmed. HB 1461 shifted most of the State Board of Insurance's authority to the Commissioner of Insurance on September 1, 1993, including the authority to issue emergency cease and desist orders.

The amendment to the title of Subchapter H adds the word Emergency before the current words Cease and Desist Orders, to clarify that the subchapter applies to emergency cease and desist orders issued under the Commissioner's authority granted in Insurance Code Chapter 83. Amendments to §§1.901, 1.903, and 1.905 align these sections with current statutes and update agency name references. And the repeal of §§1.902, 1.904, and 1.906 - 1.911 removes sections that are outdated, obsolete, or unnecessary.

The amendments to the sections are described in the following paragraphs.

Section 1.901. Amendments to §1.901 replace State Board of Insurance with Texas Department of Insurance to reflect the agency's current name and capitalize the phrase commissioner of insurance to conform with the agency's current style.

Section 1.903. Amendments to §1.903:

- align the required contents for an order with the current statutory criteria for issuing emergency cease and desist orders;
- insert the phrase emergency cease and desist before the word order in the section's title and the first sentence of the section;
- replace the existing language person against whom the order is entered with the phrase affected person throughout the section to reflect the statutory language;
- change the text of current paragraph (2) to update the language so that it fully addresses conduct that could support issuing a cease and desist order under Insurance Code §83.051;
- copy the language from current paragraph (5) into a new paragraph (3), with modifications to improve its clarity;
- incorporate the existing language of paragraph (3) into a new paragraph (4), breaking the text into subparagraphs (A), (B), (C), and (D) and revising it for clarity and consistency with Insurance Code §83.053 and the other proposed amendments;
- redesignate existing paragraph (4) as paragraph (5) and revise it for clarity and consistency with the other proposed amendments.

The adopted text has been changed from the text as proposed by inserting the word and at the end of paragraph (4)(C).

Section 1.905. An amendment to §1.905 changes the deadline for an affected person to request a hearing to the 60th day after the order is served, to reflect the timeframe provided by Insurance Code §83.053. Another amendment requires TDI's chief clerk, rather than the affected person, to provide a copy of the hearing request to TDI staff. In addition, the proposed amendments change nonsubstantive editorial and formatting elements to conform the section to the agency's current style and to improve clarity. Also, the phrase emergency cease and desist is inserted before the word order and State Board of Insurance is replaced with Texas Department of Insurance.

The adopted text has been changed from the text as proposed by clarifying a reference to the Texas Department of Insurance.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendments and repeals.

SUBCHAPTER H. EMERGENCY CEASE AND DESIST ORDERS

28 TAC §§1.901, 1.903, 1.905

STATUTORY AUTHORITY. The Commissioner adopts the amendments to §§1.901, 1.903, and 1.905 under Insurance Code §83.003 and §36.001.

Insurance Code §83.003 provides that the Commissioner may adopt reasonable rules to implement Chapter 83.

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.

§1.903. *Contents of the Emergency Cease and Desist Order.*
An emergency cease and desist order will contain the following:

- (1) the name and last known address of the affected person;
- (2) a short and plain statement of the alleged conduct that supports issuing the order under Insurance Code §83.051;

(3) a requirement that the affected person immediately cease and desist from the described conduct, acts, methods, or practices;

(4) a statement of the rights of the affected person to request a hearing to contest the order. This statement will include:

(A) the specific statutes or rules found to have been violated;

(B) a statement of legal authority and jurisdiction under which the order is issued;

(C) the time limit for requesting a hearing to contest the order, including citation to Insurance Code Chapter 83 and this subchapter; and

(D) notice that the burden of requesting the hearing is on the affected person; and

(5) a statement of the penalties that may be assessed against the affected person if the affected person violates the order.

§1.905. *Request for Hearing on Emergency Cease and Desist Orders.*

A person who is affected by the issuance of an emergency cease and desist order and who desires a hearing regarding such order must file a written request for hearing with the chief clerk of the Texas Department of Insurance no later than the 60th day after the date on which the person is served the order. The chief clerk will send a copy of the request to the staff attorney responsible for representing the Texas Department of Insurance at the hearing.

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 July 22, 2022.

TRD-202202767

James Person

General Counsel

Texas Department of Insurance

Effective date: August 11, 2022

Proposal publication date: April 22, 2022

For further information, please call: (512) 676-6587



SUBCHAPTER H. CEASE AND DESIST ORDERS

28 TAC §§1.902, 1.904, 1.906 - 1.911

STATUTORY AUTHORITY. The Commissioner adopts the repeal of §§1.902, 1.904, and 1.906 - 1.911 under Insurance Code §83.003 and §36.001.

Insurance Code §83.003 provides that the Commissioner may adopt reasonable rules to implement Chapter 83.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 2022.

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CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

The Commissioner of Insurance adopts amendments to 28 TAC §19.1803, concerning Texas standard prior authorization request forms, and §19.1820, concerning the Texas standard prior authorization request form for prescription drug benefits. The Commissioner adopts §19.1803 and §19.1820 with changes to the proposed text published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 884). The rules will be republished.

REASONED JUSTIFICATION. Insurance Code §1369.304(a) requires the Commissioner by rule to prescribe a single standard form for requesting prior authorization of prescription drug benefits. Insurance Code §1369.305(c) authorizes the Commissioner to consult with the Advisory Committee for the Standard Request Form for Prior Authorization of Prescription Drug Benefits (Advisory Committee) as needed on a subsequent amendment of an adopted rule described by §1369.304. Health benefit plan issuers are required by statute to accept the form the Texas Department of Insurance (TDI) adopts for any prior authorization of prescription drug benefits required by the plan.

Insurance Code §1369.305(d) provides that the Advisory Committee must meet every two years to review the form, examine the form's effectiveness and impact on patient safety, and determine whether changes are needed. The Advisory Committee met on December 17, 2020, and recommended substantive revisions to the form and rule. It also recommended that an informal draft of the form and rule be posted for public comment. An informal draft was posted on June 16, 2021, with comments due July 1, 2021. The Advisory Committee reconvened on September 8, 2021, in a public meeting to review the comments received and make recommendations in response. Staff considered Advisory Committee recommendations in drafting the proposal.

Section 19.1803. Definitions. Amended §19.1803 deletes the defined terms "BIN" (processor identification number) and "PCN" (processor control number), and the paragraphs in the section are renumbered to reflect deletion of the two defined terms. These amendments remove extraneous pharmacy-related data-collection terms from the section, for consistency with removal of the terms from §19.1820(a)(4). These terms, as previously used in §19.1820(a)(4), required the prescribing provider or the prescribing provider's designee to provide, if available, the BIN and PCN. Corresponding deletions of the fields referring to "BIN # (if available)" and "PCN (if available)" are adopted in Section III of the request form without change from the proposed version.

As adopted, §19.1803(1) is changed to correct an error in the proposed text by deleting the term "technology."

Section 19.1820. Prior Authorization Request Form for Prescription Drug Benefits, Required Acceptance, and Use.

In addition to making a number of changes in §19.1820(a) to conform to current TDI language preferences and drafting practices, amended §19.1820(a) changes the name of the request form in both the rule and the form adopted by reference in the rule to "Texas Standard Prior Authorization Request Form for Prescription Drug Benefits." The revisions conform the rule and the request form heading to the name used in the definition of "form" in §19.1803(4) and on page 1 of the request form. Also, amended §19.1820(a) deletes a redundant use of the word "form." Amended §19.1820(a) also removes a mailing address for requesting the form and its instruction sheet because TDI no longer mails the request form but instead provides access via the TDI website.

To reflect that changes are made to the form in response to comments, adopted §19.1820(a) is changed to update the form revision date from the date included in the proposed text.

In response to comments, TDI does not adopt the proposed changes to §19.1820(a)(3) and the corresponding proposed changes to Section II of the request form. The proposed changes would have added a provision for a non-expedited/non-urgent prior authorization review request, including a certification by the prescribing provider or the prescribing provider's designee that applying the standard review time frame is medically appropriate.

Amendments to §19.1820(a)(4) delete the requirement that the request form contain a space for the BIN, PCN, and pharmacy ID numbers (referred to as "Rx ID #" in the request form).

An amendment removes an extraneous "its" from §19.1820(a)(6). Amendments to §19.1820(a)(6)(A) clarify that the form will contain space for the name of the prescription drug.

In response to comment, the text of adopted §19.1820(a)(6)(G) and §19.1820(a)(6)(G)(ii) is changed from the proposed text to add the phrase "to the best of the prescribing provider's knowledge" to address concerns that a prescribing provider does not have any guarantee that a patient is actually taking the prescribed medication.

Section 19.1820(a)(6)(G)(ii) is amended to add a requirement that the prescribing provider state, in the case of a request for continuation of therapy, whether the patient is adhering to the drug therapy regimen and whether the regimen is effective. In response to comment, the proposed phrase "complying with" in §19.1820(a)(6)(G)(ii)(II) is changed to "adhering to."

To correct typographical errors in the existing rule text that were identified after proposal, TDI changes the text as proposed to delete the word "and" from the end of §19.1820(a)(11) and substitutes "; and" for the period at the end of paragraph (12).

TDI changes §19.1820(a)(13) as proposed by moving the proposed text of the paragraph to subsection (a). The word "also" is not included in the text as inserted in subsection (a), and the phrase "to the form" is added, so that the paragraph items solely describe information entered into the form as indicated in the paragraph list's lead-in sentence. In response to comment and for clarification, TDI also changes §19.1820(a)(13) by adding text that provides for the incorporation of a directive to the prescribing provider into the request form. The directive states that, for a request for prior authorization of continuation of therapy, it is not necessary to complete the sections of the request form regarding patient clinical information and justification for the therapy (i.e., Sections VIII and IX of the request form) unless there has been a material change in the information previously provided. This

addition correlates the rule with the change (as was proposed) to Section V of the request form. New subparagraph (A) clarifies that this directive does not apply to a request for a step-therapy exception. In the case of a request for a step-therapy exception, a prescribing provider should instead complete the section of the request form regarding the justification for the step-therapy exception (i.e., Section IX), as described in new subparagraph (B). Corresponding language also has been added to Section V of the request form. For additional clarification, TDI adds a reference and a link to Insurance Code §1369.0546(c) in the instruction sheet, under the heading "Section IX - Justification," in the fourth bullet regarding step therapy.

Amendments to §19.1820(c) require that an issuer accept a request for prior authorization made by a prescribing provider using the form on or after the effective date of the section, and they require that an issuer accept a request for prior authorization using the form that was in place prior to the effective date of the section for 90 days after the effective date.

Texas Standard Prior Authorization Request Form for Prescription Drug Benefits

Revisions to the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits, adopted by reference in §19.1820(a), update the instruction sheet by deleting a reference to a specific effective date and replacing it with a reference to the rule itself and by removing a reference to a specific version of the ICD manual. The revisions also include deletion of the TDI mailing address located at the bottom of the sheet and an updated revision date.

In response to comment, the paragraph of the instruction sheet entitled "Section IX - Justification" is changed from what was included with the proposed rule by adding a citation to Insurance Code §1369.0546(c).

As is addressed in the discussion regarding revisions to §19.1820(a), the revisions to the request form revise its heading on page 2 to correlate with the heading on the instruction sheet and revise a corresponding reference to the form in the instruction sheet.

In response to comments, the proposed language in Section II of the request form that would have added a provision to certify non-expedited/non-urgent review requests is removed, as is the "OR" in Section II that separated the two types of review. The proposed addition of a heading in Section II indicating a directive for checking an appropriate box for certification and a directive for signing and dating the form is also removed. The revisions add a date line and the proposed deletion of the phrase "By checking this box and signing below" is changed to add the statement "By checking this box and signing and dating below."

In Section III of the request form, the revisions delete extraneous pharmacy-related data-collection fields. These fields required the prescribing provider or the prescribing provider's designee to provide, if available, the BIN, PCN, and pharmacy ID number (referred to in Section III of the previously adopted version of the request form as "Rx ID #").

In the case of a request for continuation of therapy, added fields provide opportunity to include statements in Section V of the request form for the prescribing provider or the prescribing provider's designee to state, to the best of their knowledge, whether the patient is adhering to the drug therapy regimen and whether the drug therapy regimen is effective. In response to comment, the proposed phrase "Patient is complying with the

drug therapy regimen" is replaced in Section V of the adopted version of the request form with the phrase "Patient is adhering to the drug therapy regimen." In response to comment, TDI changes the phrase in Section V "For continuation of therapy, complete the following" (as was proposed) to read instead "For continuation of therapy, complete the following to the best of your knowledge." These statement fields are followed by a note in Section V indicating that it is not necessary for the prescribing provider or the prescribing provider's designee to complete Sections VIII or IX of the request form unless there has been a material change in the information previously provided; this note is adopted with changes from the sentence as proposed. In response to comments requesting clarification, the sentence is changed to distinguish between the information requirements for a request for continuation of therapy versus those for a request for a step-therapy exception. As referenced previously in the discussion regarding §19.1820(a)(13)(A) and (B), the note in Section V of the request form is also changed to add a directive to the prescribing provider stating that, for a request for a step-therapy exception, Section IX of the request form must be completed.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from four commenters. Commenters in support of the proposal with changes were Pharmaceutical Care Management Association, the Texas Association of Health Plans, the Texas Medical Association, and the Texas Healthcare and Bioscience Institute.

Comments on the rules generally

Comment. A commenter states that the cost statements in the rule proposal are incorrect and speculative and the cost statements inappropriately discount prior comments of health plans and pharmacy benefit managers (PBMs), as well as the statutory provisions of Texas step-therapy laws. The commenter states that health plan issuers do not agree that including partial information and incorrect instructions on the form will eliminate the need to obtain additional information to support step-therapy exception requests. The commenter also states that the reference to issuers having their own form is misleading because issuers are required by law to accept the promulgated form. The commenter strongly disagrees that the overall cost of complying with the amendments will be the same as, or lower than, the cost of complying with the current rule.

On the other hand, another commenter applauds TDI's intent to fast-track the process for prior authorizations for continuation of therapy and supports the recommended changes to Section V of the request form as proposed. The commenter states that these changes will appropriately decrease the administrative burden and the amount of information submitted by providers for a prior authorization for continuation of therapy that has previously been reviewed and approved by the issuer. This process simplification will help ensure that providers are not required to spend valuable time conducting duplicative administrative processes and can spend more time focused on patient care.

A commenter states that the proposal creates uncertainty as to whether and how to proceed in instances where a conflict is identified between the provider's certification of patient compliance with the therapy regimen and evidence to the contrary. This could cause medication delays, as well as the potential for prescriptions to be dispensed when not appropriate, creating patient safety concerns and the potential for fraud, waste, and abuse (especially for high-cost specialty drugs).

Agency Response. In response to the comment regarding the cost impact on issuers, TDI revises the rule and the form, including the instruction sheet, with regard to requests for an exception to a health plan step-therapy protocol. TDI believes that, in the case of a request for a step-therapy exception, the added language (see the added statutory reference and link in Section IX of the instruction sheet, the note in Section V of the request form, and §19.1820(a)(13) as adopted) will clarify the application of the form regarding such requests and will lessen the potential for confusion in its use. The added language will support issuers' ability to obtain the necessary information in order to respond to the step-therapy exception request.

TDI disagrees that the proposal's reference to issuers having their own form is misleading. While issuers are required by law to accept the promulgated form, nothing prohibits an issuer from developing and using an alternative form.

TDI also disagrees that the proposal will lead to uncertainty in cases of conflict between the prescribing provider's certification of patient compliance and evidence to the contrary. In the event of such a conflict, TDI believes that the issuer has sufficient access to information concerning patient adherence (for example, dispensing history) to identify cases of potential fraud or patient noncompliance. Nevertheless, TDI will monitor issuers' implementation of the rules and new request form and take future action to improve clarity if necessary.

Comments on §19.1820

Comment. A commenter recommends retaining the current TDI mailing address information in §19.1820(a) of the rule for ease of access, particularly for any physician who may encounter technical issues in downloading or otherwise accessing the request form online. The commenter states that, given the numerous prior authorization requests currently imposed by health plan issuers, it is important for TDI to facilitate access to the standard form through as many methods as possible.

Agency Response. TDI declines to make the change. TDI no longer mails the request form but instead relies on access via the agency's website, which TDI believes is sufficient. Furthermore, having TDI's mailing address in the rule and form has led to confusion in the past, with providers mailing the form to TDI instead of the appropriate carrier. In many instances this has resulted in a delay of care for patients. Therefore, to alleviate this confusion, TDI believes it appropriate to remove its mailing address from the rule and form.

Comment. Three commenters express opposition to the proposed language in §19.1820(a)(3) (and the corresponding proposed changes to the request form) regarding certification of a non-expedited/non-urgent request for review of a prior authorization. They recommend that TDI not adopt the proposed language in §19.1820(a)(3) that would add a provision for a non-expedited/non-urgent prior authorization review request, including a certification by the prescribing provider or the prescribing provider's designee that applying the standard review time frame is medically appropriate. Two commenters state that TDI lacks statutory authority for the additional certification. A commenter argues that the requirement is unnecessary, creates additional administrative burden, and could be seen as improperly shifting responsibility regarding delays in the prior authorization review from health plans to physicians.

Agency Response. TDI disagrees that it lacks statutory authority for the provision, but, on the basis of the commenters' concerns,

agrees to remove the proposed language from the rule and from Section II of the request form.

Comment. Several commenters express concern that the proposed rule would eliminate the current practice by some health plans, PBMs, and utilization review agents of not requiring the requesting provider's signature on a prior authorization request. They oppose this disallowance, and recommend the rules recognize that health plans, PBMs, and utilization review agents have the option to not require signatures on all prior authorization requests, as this would expedite the approval process.

Agency Response. TDI declines to make a change to the request form or rules. The rules do not specifically address the use and acceptance of the request form in situations where there is no signature of the requesting provider or designee. It is anticipated that health plans, PBMs, and utilization review agents have processes in place that address the authority of the prescribing provider and the manner in which the prescribing provider is to complete and submit the request form. TDI believes that the proposed changes strike the appropriate balance between promoting efficiency in the prior authorization process while recognizing patient safety standards in current practice.

Comment. Several commenters express concerns about the impact of the proposed revisions to §19.1820 and the request form on a request for a step-therapy exception. They state that the revisions would create a conflict in the use of the form with regard to a request for a step-therapy exception because the standard for requesting such an exception is in conflict with the standard in the rule and the request form. They note that Insurance Code §1369.0546(b) requires the prescribing provider to use the request form and that Insurance Code §1369.0546(c) sets forth specific requirements that the request must meet in order for a health plan issuer to grant the request for a step-therapy exception. One commenter states that this lack of clarity could leave a plan without proper recourse in how to proceed, and due to a conflict and lack of clarity, could lead to a delay in a patient's therapy.

One commenter states that Senate Bill 680, 85th Legislature, 2017, requires supporting documentation and imposes requirements for an exception to a health plan step-therapy protocol. The commenter recommends that the rule and proposed request form require the requesting provider to submit supporting documents and state that "the change in the patient's prescription drug regimen required by the step-therapy protocol is expected to be ineffective or cause harm to the patient based on the known clinical characteristics of the patient and the known characteristics of the required prescription drug therapy regimen."

Two commenters object to the changes to Section V of the request form directing the prescribing provider to not complete Sections VIII or IX of the form unless there has been a material change in the information previously provided. They state that this change would conflict with the documentation requirements for a step-therapy exception request in Insurance Code §1369.0546(c).

Two commenters express concerns that the proposed changes to §19.1820(a)(6)(G) and the corresponding changes to Section V of the request form would conflict with the documentation requirements for requesting a step-therapy exception under Insurance Code §1369.0546(c). One of the commenters recommends that TDI revise the rule and request form to track the documentation requirements spelled out in Insurance Code

§1369.0546(c)(4), since the step-therapy exception requirement clearly does not apply unless these conditions are met.

Agency Response. TDI disagrees that the proposed rule conflicts with Insurance Code §1369.0546(c) because a request for an exception to a health plan step-therapy protocol is distinct from a request for a continuation of therapy. However, to avoid any confusion regarding the documentation required for a request for a step-therapy exception, TDI modifies the note in Section V of the request form and makes corresponding changes to §19.1820(a) by adding new text to paragraph (13). These modifications clarify that the reduced information required for a request for continuation of therapy does not extend to a request for a step-therapy exception. The instructions for the current request form, in the section entitled "Section IX - Justification," specify that Section IX of the request form is to be used by the prescribing provider to "provide pertinent information about any step-therapy exception, if applicable." TDI believes that Section IX is the appropriate place for a prescribing provider to provide documentation of a request for a step-therapy exception as set forth in Insurance Code §1369.0546(c). Hence, no change to §19.1820(a)(6)(G) or to Section IX of the request form is necessary.

With regard to the recommendation that §19.1820 and the request form be revised to include language from Insurance Code §1369.0546(c), TDI declines to make the requested change. The change to the adopted rule and the request form clarify that the standard for requesting a continuation of therapy differs from the standard for requesting an exception to a health plan step-therapy protocol, so no change is necessary.

With regard to commenters' objections to the changes to Section V of the request form directing the prescribing provider to not complete Sections VIII or IX of the request form unless there has been a material change in the information previously provided, TDI declines to make the requested change to the request form. TDI notes that the parenthetical note in Section V does not prohibit a prescribing provider from completing Sections VIII and IX. The language in Section V prohibiting completion of Sections VIII or IX (unless there was a material change in information) was contained in the informal markup of the request form, but was revised in the proposed rulemaking in response to the recommendation of the Advisory Committee. Instead, Section V provides, with regard to continuation of therapy, that "it is not necessary" to complete Sections VIII or IX unless there has been a material change in the information previously provided. This change has been carried over into the adopted version of the form.

With regard to a request for a step-therapy exception made under Insurance Code §1369.0546(c), it is expected that the prescribing provider would address the documentation requirements specified in Insurance Code §1369.0546(c) by including this documentation in Section IX of the request form. Since the request is for an exception to a health plan step-therapy protocol (and not a request for continuation of therapy), the prescribing provider would not be expected to complete the parts of Section V of the request form that address patient adherence to a drug therapy regimen and the drug therapy regimen's effectiveness.

The instructions for the request form, in the section entitled "Section IX - Justification," specify that Section IX of the request form is to be used by the prescribing provider to "provide pertinent information about any step-therapy exception, if applicable." TDI believes that Section IX is the appropriate place for a prescribing provider to document a step-therapy exception request as

set forth in Insurance Code §1369.0546(c). So no change to §19.1820(a)(6)(G) is necessary.

For clarification, TDI adds a reference and a link to Insurance Code §1369.0546(c) in the instruction sheet of the request form, under the heading "Section IX - Justification," in the fourth bullet regarding step therapy. Also, TDI adds new text to §19.1820(a)(13) to clarify that the reduced information required for a request for continuation of therapy does not extend to a request for a step-therapy exception. In addition, TDI adds a corresponding directive to Section V of the request form.

Comment. Regarding §19.1820(a)(6)(G), in the context of a step-therapy exception request, a commenter recommends including a note or instruction that if the submitted documentation does not address the specific required drug alternatives, then additional information may be required.

Agency Response. TDI recognizes that for an exception to a health plan step-therapy protocol, documentation must be provided as specified in Insurance Code §1369.0546(c)(1), (2), (3), or (4). To ensure providers understand the supporting documentation that must accompany a request for a step-therapy exception, TDI modifies the instruction sheet by adding a reference and a link to Insurance Code §1369.0546(c) under the heading "Section IX - Justification." Also, TDI adds new text to §19.1820(a)(13) to clarify that the reduced information required for a request for continuation of therapy does not extend to a request for a step-therapy exception. In addition, TDI adds a corresponding directive to Section V of the request form.

Comment. Three commenters recommend that the transition period in §19.1820(c) (during which the requesting provider could use either the old or the revised request form) be changed from 90 days after the rule's effective date, as was proposed, to a different time period. Two commenters recommend that the rule provide for an unspecified, shorter time frame. Another commenter recommends that TDI provide 120 days, rather than 90 days, as an appropriate transition period.

Agency Response. TDI declines to make a change. TDI believes that 90 days is a reasonable transition period for issuers to discontinue use of the former request form and instructions.

Comment. A commenter strongly supports a reduction in the required completion of certain fields (Sections VIII and IX) in the request form related to continuation of therapy, stating that any streamlining in the prior authorization process likely will have a dramatic impact on physician practices.

Agency Response. TDI appreciates the support.

Comments on the request form

Comment. Two commenters state that the standard for expedited review ("may seriously jeopardize the life or health of the patient or the patient's ability to regain maximum function") in Section II of the request form conflicts with the description in Insurance Code §4201.357 regarding utilization review and the expedited appeal of a denial of emergency care, continued hospitalization, or another service. Insurance Code §4201.357(a) requires that the requesting health care provider include "a written statement with supporting documentation that the service is necessary to treat a life-threatening condition or prevent serious harm to the patient" for an expedited appeal of the denial. One of the two commenters requests a resolution to the conflict of definitions for expedited appeal standards. The other commenter opposes the addition of a new standard for non-expedited/non-urgent review and recommends that TDI use the correct statutory

language ("necessary to treat") in the revised rule, request form, and instructions.

Agency Response. TDI declines to make a change. Insurance Code §4201.357 applies to expedited appeals of certain adverse determinations (after the patient requested and was denied a service or a prescription drug). It is inapplicable to the sections being amended, which address the initial request for a prescription drug or the continuation of that prescription drug. TDI acknowledges that the two standards ("necessary to treat" in the case of an expedited appeal of a denial under Insurance Code §4201.357 vs. "may seriously jeopardize" in the case of a request for expedited or urgent review of a prior authorization request in §19.1820(a)(3) and Section II of the request form) are different; however, they are not in conflict in this case. Each standard applies to a different setting.

Comment. A commenter recommends that Section V of the request form include the dosing frequency. The commenter states that this can be very helpful, especially on appeal requests, when health plans are handling prior authorization requests for medications that include both a loading and maintenance dose.

Agency Response. TDI declines to make a change. The dosing frequency should already be part of the prescription, not an extra step in the request form.

Comment. A commenter states that if there is no material change in the information previously provided in Sections VIII or IX of the request form, then those sections should not be completed. The commenter does not believe that TDI needs to add the two new proposed requirements regarding drug effectiveness and patient compliance to Section V of the request form to justify the removal of the requirements to complete Sections VIII and IX for continuing therapies when there has been no material change in the information previously provided. The commenter recommends in that case that TDI not adopt the two new required statements (regarding drug effectiveness and patient compliance). The commenter recommends that if TDI adds the two new components to §19.1820(a)(6)(G)(ii)(II) and (III), then it also should make certain changes to the rule and the form. Specifically, the commenter recommends that the rule be modified to include qualifiers that the prescribing provider is attesting only to the best of his or her knowledge.

Agency Response. TDI disagrees with the commenter's recommendation to not include the two new proposed requirements (concerning patient compliance and drug therapy regimen effectiveness) in Section V of the request form and §19.1820(a)(6)(G)(ii)(II) and (III). Inclusion of these two new requirements will provide an added layer of assurance regarding the use and effectiveness of the fast-track therapy-continuation process. TDI does, however, agree to add a corresponding knowledge qualifier to the provision in Section V relating to continuation of therapy. TDI also has made similar changes to §19.1820(a)(6)(G) and §19.1820(a)(6)(G)(ii).

Comment. A commenter states strong opposition to the two additional requirements in §19.1820(a)(6)(G)(ii)(II) and (III) (even with the modification discussed previously) if they were stand-alone new additions without any corresponding benefit in relief from completing the fields in Sections VIII and IX of the request form adopted at the same time as the requirements in §19.1820(a)(6)(G)(ii)(II) and (III). The commenter states further that, on their own, these requirements would increase, rather than decrease, the administrative burdens of physicians completing the standard prior authorization form; depart from the typ-

ical required elements included on prior authorization forms; and not appropriately recognize that it may be medically necessary and appropriate to provide a drug therapy regimen to a patient who is not fully compliant.

Agency Response. TDI declines to make a change. The two additional requirements contained in §19.1820(a)(6)(G)(ii)(II) and (III) (concerning patient compliance and drug therapy effectiveness) and in Section V of the request form are intended to apply only in the context of a request for prior authorization for a continuation of therapy. They are not intended as stand-alone provisions.

Comment. A commenter strongly recommends that TDI adopt the following proposed language in Section V of the request form: "NOTE: For a request for prior authorization of continuation of therapy, it is not necessary to complete Sections VIII or IX of the request form unless there has been a material change in the information previously provided."

Agency Response. TDI agrees to make the requested change, but has made modifications to the suggested text to clarify the application of Section V of the request form with regard to a request for a step-therapy exception in response to a separate comment.

Comment. A commenter encourages TDI to provide additional guidance to address two key points so that the fast-track process works as intended by the Advisory Committee. The first point is a request to clarify that the notation on the form that the drug therapy regimen is effective indicates that the provider supports continued treatment with the designated therapy. The second point is a request to include instructions that limit the ability of an issuer to add administrative requirements beyond what is asked for in the standard form simply because the provider has taken advantage of the fast-track process. The commenter states that this guidance is necessary to ensure that this fast-track process has the full impact intended and does not become a trigger for an issuer to mandate additional processes that bypass the use of the standard form required by law.

Agency Response. TDI declines to make the requested change to the request form. Section V of the request form requires, in the case of a request for prior authorization of continuation of therapy, that a prescribing provider check the boxes regarding patient adherence to the drug therapy regimen and the drug therapy regimen's effectiveness. Completion of this portion of the request form indicates that the request is for continuation of therapy and that it is for the drug named in Section V.

Regarding the second point--inclusion of instructions that limit an issuer's ability to add administrative requirements beyond what is in the standard form--TDI declines to make a change to the form or the rule. However, it should be emphasized that the main purpose of the fast-track continuation of therapy process in Section V of the request form (and corresponding §19.1820(a)(6)(G)(ii)(II) and (III)) is to reduce the administrative burden of the prior authorization process on prescribing providers. The addition of the fast-track provision was a key recommendation of the Advisory Committee. TDI plans to monitor the rollout of this provision and, if warranted, will consider whether future rulemaking is appropriate to address obstacles to its implementation.

Comment. In discussing the instruction sheet to the request form, a commenter notes that it states that an "issuer may also provide an electronic version of this form on its website." The commenter also notes that the Insurance Code contains a

specific provision requiring plan issuers and agents to exchange prior authorization requests electronically with a prescribing provider who has e-prescribing capability and who initiates a request electronically. Citing standards for electronic prior authorizations (ePAs) adopted by the National Council for Prescription Drug Programs, the commenter encourages TDI to revisit these standards and, in compliance with the law, update the request form as soon as possible to facilitate the expanded use of ePAs. The commenter states that doing so will simplify and decrease administrative burdens and decrease delays for patients.

Agency Response. TDI declines to make the change. The Centers for Medicare & Medicaid Services adopted rules that address certain transactions with regard to submission of ePAs under Medicare Part D. See 42 CFR §423.160. The federal regulation applies to Medicare Part D sponsors. The state rules that are the subject of this adoption order apply to a "health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits." See Insurance Code §1369.304(a)(2). Therefore, the federal e-prescribing rules are inapplicable to non-Medicare plan sponsors. Nevertheless, the department did review the federal e-prescribing rules in developing this rulemaking.

Comment. A commenter recommends that in Section V of the request form, the term "compliant" be replaced with the more updated term "adherence." The commenter states that, in recent years, the use of the term "compliant" has raised concerns in the patient advocate and health care community.

Agency Response. TDI agrees to make the suggested change. TDI deletes the phrase "complying with" in Section V of the request form and replaces it with the phrase "adhering to." TDI makes a corresponding change in §19.1820(a)(6)(G)(ii)(II).

SUBCHAPTER S. FORMS TO REQUEST PRIOR AUTHORIZATION DIVISION 1. TEXAS STANDARD PRIOR AUTHORIZATION REQUEST FORMS

28 TAC §19.1803

STATUTORY AUTHORITY. The Commissioner adopts amendments to §19.1803 under Insurance Code §1369.304 and §36.001.

Insurance Code §1369.304 requires that the Commissioner by rule prescribe a single standard form for requesting prior authorization of prescription drug benefits.

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.

§19.1803. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

- (1) CDT--Current Dental Terminology code set maintained by the American Dental Association.
- (2) CPT--Current Procedural Terminology code set maintained by the American Medical Association.
- (3) Department or TDI--Texas Department of Insurance.

(4) Form--In Division 2 of this subchapter, the Texas Standard Prior Authorization Request Form for Health Care Services. In Division 3 of this subchapter, the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits.

(5) HCPCS--Healthcare Common Procedure Coding System.

(6) Health benefit plan--

(A) a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document offered by a health benefit plan issuer.

(B) Health benefit plan also includes:

(i) group health coverage made available by a school district in accord with Education Code §22.004;

(ii) coverage under the child health program in Health and Safety Code Chapter 62, or the health benefits plan for children in Health and Safety Code Chapter 63;

(iii) a Medicaid managed care program operated under Government Code Chapter 533, or a Medicaid program operated under Human Resources Code Chapter 32;

(iv) a basic coverage plan under Insurance Code Chapter 1551;

(v) a basic plan under Insurance Code Chapter 1575;

(vi) a primary care coverage plan under Insurance Code Chapter 1579; and

(vii) basic coverage under Insurance Code Chapter 1601.

(7) Health benefit plan issuer--An entity authorized under the Insurance Code or another insurance law of this state that delivers or issues for delivery a health benefit plan or other coverage described in Insurance Code §1217.002 or Insurance Code §1369.252.

(8) Health care service--A service to diagnose, prevent, alleviate, cure, or heal a human illness or injury that is provided by a physician or other health care provider. The term includes medical or health care treatments, consultations, procedures, drugs, supplies, imaging and diagnostic services, inpatient and outpatient care, medical devices other than those included in the definition of prescription drugs in Occupations Code §551.003, and durable medical equipment. The term does not include prescription drugs or devices as defined by Occupations Code §551.003.

(9) ICD--International Classification of Diseases.

(10) Issuer--A health benefit plan issuer and the agent of a health benefit plan issuer that manages or administers the issuer's health care services or prescription drug benefits.

(11) NDC--National Drug Code.

(12) NPI number--A provider's or facility's National Provider Identifier.

(13) Prescription drug--Has the meaning assigned by Occupations Code §551.003.

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 July 22, 2022.

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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6587



DIVISION 3. TEXAS STANDARD PRIOR AUTHORIZATION REQUEST FORM FOR PRESCRIPTION DRUG BENEFITS

28 TAC §19.1820

STATUTORY AUTHORITY. The Commissioner adopts amendments to §19.1820 under Insurance Code §1369.304 and §36.001.

Insurance Code §1369.304 requires that the Commissioner by rule prescribe a single standard form for requesting prior authorization of prescription drug benefits.

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.

§19.1820. Prior Authorization Request Form for Prescription Drug Benefits, Required Acceptance, and Use.

(a) Form requirements. The Commissioner adopts by reference the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits, Rev. 05/2022, to be accepted and used by an issuer in compliance with subsection (b) of this section. The form and its instruction sheet are on TDI's website at www.tdi.texas.gov/forms/form10.html. The form must be reproduced without changes. A prescribing provider may attach supporting clinical documentation to the form (medical records, progress notes, lab reports, radiology studies, etc.). The form provides space for the following information:

- (1) the name of the issuer or the issuer's agent that manages prescription drug benefits, telephone number, and facsimile (fax) number;
- (2) the date the request is submitted;
- (3) a place to request an expedited or urgent review if the prescribing provider or the prescribing provider's designee certifies that applying the standard review time frame may seriously jeopardize the life or health of the patient or the patient's ability to regain maximum function;
- (4) the patient's name, contact telephone number, date of birth, sex, address, and identifying insurance information;
- (5) the prescribing provider's name, NPI number, specialty, telephone and fax numbers, address, and contact person's name and telephone number;
- (6) for a prescription drug:
 - (A) drug name;
 - (B) strength;
 - (C) route of administration;

- (D) quantity;
- (E) number of days' supply;
- (F) expected therapy duration; and
- (G) to the best of the prescribing provider's knowledge, whether the medication is:
 - (i) a new therapy; or
 - (ii) continuation of therapy, and if so, to the best of the prescribing provider's knowledge:
 - (I) the approximate date therapy was initiated;
 - (II) whether the patient is adhering to the drug therapy regimen; and
 - (III) whether the drug therapy regimen is effective;
- (7) for a provider administered drug, the HCPCS code, NDC number, and dose per administration;
- (8) for a prescription compound drug, its name, ingredients, and each ingredient's NDC number and quantity;
- (9) for a prescription device, its name, expected duration of use, and, if applicable, its HCPCS code;
- (10) the patient's clinical information, including:
 - (A) diagnosis, ICD version number (if more than one version is allowed by the U.S. Department of Health and Human Services), and ICD code;
 - (B) to the best of the prescribing provider's knowledge, the drugs the patient has taken for this diagnosis, including:
 - (i) drug name, strength, and frequency;
 - (ii) the approximate dates or duration the drugs were taken; and
 - (iii) patient's response, reason for failure, or allergic reaction;
 - (C) the patient's drug allergies, if any; and
 - (D) the patient's height and weight, if relevant;
- (11) a list of relevant lab tests, and their dates and values;
- (12) a place for the prescribing provider to:
 - (A) include pertinent clinical information to justify requests for initial or ongoing therapy, or increases in current dosage, strength, or frequency;
 - (B) explain any comorbid conditions and contraindications for formulary drugs; or
 - (C) provide details regarding titration regimen or oncology staging, if applicable; and
- (13) a directive to the prescribing provider stating that:
 - (A) for a request for prior authorization of continuation of therapy (other than a request for a step-therapy exception as provided in subparagraph (B) of this paragraph), it is not necessary to complete the sections of the form regarding patient clinical information and justification for the therapy unless there has been a material change in the information previously provided; and
 - (B) for a request for a step-therapy exception, the section of the form regarding justification for the step-therapy exception must be completed.

(b) Acceptance and use of the form.

(1) If a prescribing provider submits the form to request prior authorization of a prescription drug benefit for which the issuer's plan requires prior authorization, the issuer must accept and use the form for that purpose. An issuer may also have on its website another electronic process a prescribing provider may use to request prior authorization of a prescription drug benefit.

(2) This form may be used by a prescribing provider to request prior authorization of:

- (A) a prescription drug;
- (B) a prescription device;
- (C) formulary exceptions;
- (D) quantity limit overrides; and
- (E) step-therapy requirement exceptions.

(3) This form may not be used by a prescribing provider to:

- (A) request an appeal;
- (B) confirm eligibility;
- (C) verify coverage;
- (D) ask whether a prescription drug or device requires prior authorization; or
- (E) request prior authorization of a health care service.

(c) Effective date. An issuer must accept a request for prior authorization of prescription drug benefits made by a prescribing provider using the form on or after the effective date of this section. An issuer must accept a request using the form that was in place prior to the effective date of this section for 90 days after the effective date.

(d) Availability of the form.

(1) A health benefit plan issuer must make the form available electronically on its website.

(2) A health benefit plan issuer's agent that manages or administers prescription drug benefits must make the form available electronically on its website.

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 July 22, 2022.

TRD-202202773

James Person

General Counsel

Texas Department of Insurance

Effective date: August 11, 2022

Proposal publication date: February 25, 2022

For further information, please call: (512) 676-6587



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

DIVISION 1. GENERAL

40 TAC §700.1311

The Department of Family and Protective Services (DFPS), adopts amendments to §700.1311 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter M, Division 1, concerning Substitute-Care Services. The rule amendments are adopted without changes to the proposed text as published in the May 13, 2022, issue of the *Texas Register* (47 TexReg 2817). The rule will not be republished.

BACKGROUND AND PURPOSE

The purpose of the rule revisions is to implement Texas Family Code §264.1214(g) enacted pursuant to House Bill (HB) 700 from the 87th Regular Session (2021). The statute requires DFPS to promulgate a rule for a protocol that may be implemented to help prevent youth from aging out of a residential treatment center.

COMMENTS

The 30-day comment period ended June 12, 2022. During this period, DFPS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments to the adopted rule implement Texas Family Code §264.1214(g), enacted pursuant to House Bill 700 from the 87th Regular Session (2021).

The amendment is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by 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 July 21, 2022.

TRD-202202762

Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

Effective date: August 10, 2022

Proposal publication date: May 13, 2022

For further information, please call: (512) 929-6824



40 TAC §700.1335

The Department of Family and Protective Services (DFPS), adopts amendments to §700.1335 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter M, Division 1, concerning Substitute-Care Services. The rule amendments are adopted without changes to the proposed text published in the May 13, 2022, issue of the *Texas Register* (47 TexReg 2817). The rule will not be republished.

BACKGROUND AND PURPOSE

The purpose of this rule change is to allow single parents to participate in treatment foster care by lessening employment restrictions. The rule currently requires that a Treatment Foster Family Care home include, among other things, at least one foster parent who does not work outside the home. SB 1896, enacted in the 87th R.S., requires DFPS and Single Source Continuum Contractors to lessen employment restrictions so that single parents can participate, as long as quality care can be assured.

COMMENTS

The 30-day comment period ended June 12, 2022. During this period, DFPS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments to the adopted rule implement Texas Family Code § 264.1073, which was recently added by SB 1896 (87th R.S.).

The amendment is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family

and Protective Services commissioner shall adopt rules for the operation and provision of services by 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 July 21, 2022.

TRD-202202761

Vicki Kozikoujekian

General Counsel

Department of Family and Protective Services

Effective date: August 10, 2022

Proposal publication date: May 13, 2022

For further information, please call: (512) 929-6824





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

Office of Consumer Credit Commissioner

Title 7, Part 5

On behalf of the Finance Commission of Texas (commission), the Office of Consumer Credit Commissioner files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept written comments received on or before the 30th day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705, or by email to rule.comments@occc.texas.gov. Any proposed changes to the rules 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 public comment period prior to final adoption or repeal by the commission.

TRD-202202799

Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Filed: July 26, 2022



Adopted Rule Reviews

Department of State Health Services

Title 25, Part 1

On behalf of the Texas Department of State Health Services (DSHS), the Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 25, Part 1 of the Texas Administrative Code:

Chapter 101, Tobacco

§101.1 - Purpose

§101.2 - Definitions

§101.3 - General Requirements for Annual Reports by Manufacturers

§101.4 - Ingredient Reporting Requirements

§101.5 - Cigarette Nicotine Yield Rating Reporting Requirements

§101.6 - Tobacco Products--Excluding Cigars, Nicotine Reporting Requirements

§101.7 - Security of Report Information

§101.10 - Public Information

Notice of the review of this chapter was published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2572). HHSC received no comments concerning this chapter.

DSHS has reviewed Chapter 101 in accordance with §2001.039 of the Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting §§101.1 - 101.4, 101.7, and 101.10 in this chapter continue to exist and re-adopts these rules. DSHS determined that the original reasons for adopting §101.5 and §101.6 do not continue to exist. At a later date, the agency anticipates repealing §101.5 and §101.6 since the statutory authority no longer exists. Any appropriate amendments to Chapter 101 identified by the agency during the rule review will be published in the Proposed Rules section of a future issue of the *Texas Register*, and will be open for public comment prior to final adoption by the agency.

This concludes the agency's review of 25 TAC Chapter 101, Tobacco, as required by the Texas Government Code, §2001.039.

TRD-202202796

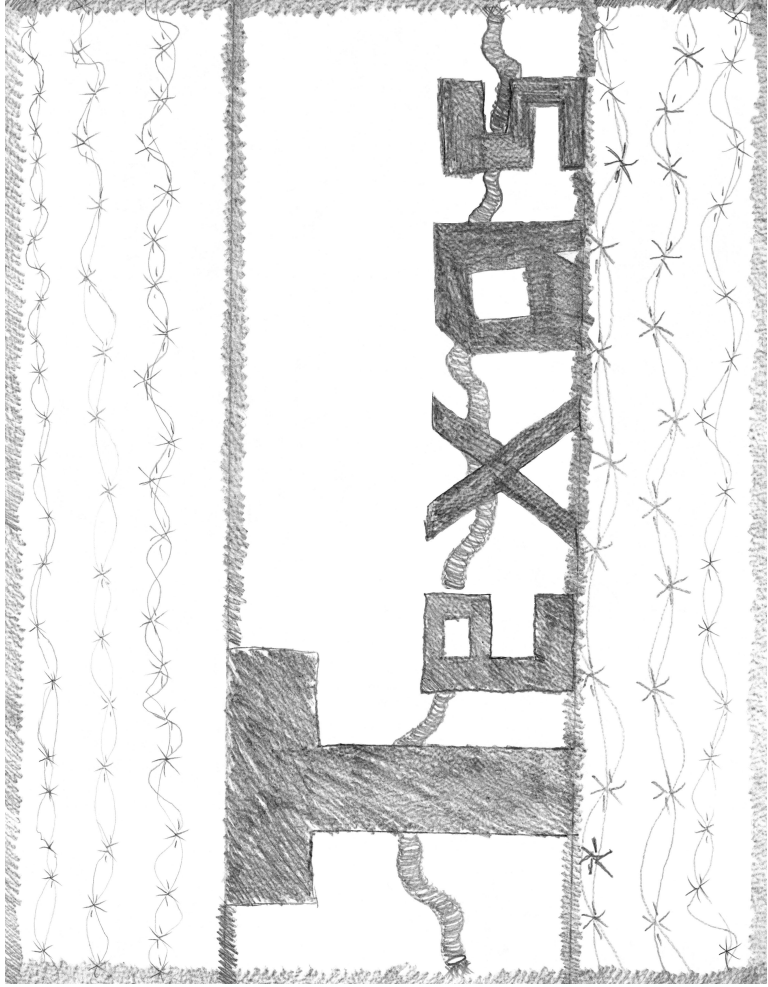
Mahan Farman-Farmaian

Director, Rules Coordination Office

Department of State Health Services

Filed: July 26, 2022





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §781.805

DISCIPLINARY ACTIONS (reported to the National Practitioner Databank)

<u>Rule</u>	<u>Level 1: Revocation (Admin Penalty: not less than \$250; no more than \$5,000 per day)</u>	<u>Level 2: Suspension (Admin Penalty: not less than \$250; no more than \$5,000 per day)</u>	<u>Level 3: Probated Suspension (Admin Penalty: not less than \$250; no more than \$5,000 per day)</u>	<u>Level 4: Reprimand (Administrative Penalty: not less than \$250; no more than \$5,000 per day)</u>
<u>781.301(1)</u>			<u>X</u>	
<u>781.301(2)</u>				<u>X</u>
<u>781.301(3)</u>			<u>X</u>	
<u>781.301(5)</u>				<u>X</u>
<u>781.301(6)</u>				<u>X</u>
<u>781.301(7)</u>				<u>X</u>
<u>781.301(8)</u>				<u>X</u>
<u>781.301(9)</u>	<u>X</u>			
<u>781.301(10)</u>		<u>X</u>		
<u>781.301(11)</u>			<u>X</u>	
<u>781.301(12)</u>				<u>X</u>
<u>781.301(13)</u>				<u>X</u>
<u>781.302(d), (e), and (g)-(i)</u>			<u>X</u>	
<u>781.303(1)</u>				<u>X</u>
<u>781.303(2)</u>				<u>X</u>
<u>781.303(3)</u>				<u>X</u>
<u>781.303(4)</u>			<u>X</u>	
<u>781.303(5)</u>	<u>X</u>			
<u>781.303(6)</u>	<u>X</u>			
<u>781.303(7)</u>				<u>X</u>
<u>781.303(8)</u>			<u>X</u>	
<u>781.303(9)</u>				<u>X</u>
<u>781.304(a)</u>				<u>X</u>
<u>781.304(b)</u>		<u>X</u>		
<u>781.304(c)</u>			<u>X</u>	
<u>781.304(d) and (p)</u>				<u>X</u>
<u>781.304(e), (l), and (q)</u>				<u>X</u>
<u>781.304(f)</u>				<u>X</u>
<u>781.304(g)</u>				<u>X</u>
<u>781.304(h)</u>				<u>X</u>
<u>781.304(i)</u>				<u>X</u>
<u>781.304(j)</u>			<u>X</u>	

<u>781.304(m)</u>				<u>X</u>
<u>781.304(n)</u>			<u>X</u>	
<u>781.304(o)</u>				<u>X</u>
<u>781.305(b) and (c)</u>	<u>X</u>			
<u>781.305(g)(1)-(4)</u>			<u>X</u>	
<u>781.306(a) and (b)</u>				<u>X</u>
<u>781.307(a)</u>				<u>X</u>
<u>781.307(b)</u>				<u>X</u>
<u>781.307(c)</u>			<u>X</u>	
<u>781.308</u>		<u>X</u>		
<u>781.309(1) and (4)</u>				<u>X</u>
<u>781.309(2)</u>			<u>X</u>	
<u>781.309(3)</u>				<u>X</u>
<u>781.309(5)</u>				<u>X</u>
<u>781.309(6)</u>				<u>X</u>
<u>781.310(a) and (b)</u>		<u>X</u>		
<u>781.310(c) and (e)</u>			<u>X</u>	
<u>781.310(d)</u>				<u>X</u>
<u>781.311(b) and (g)</u>				<u>X</u>
<u>781.311(c) and (d)</u>				<u>X</u>
<u>781.311(e)</u>				<u>X</u>
<u>781.311(f)(1-4)</u>			<u>X</u>	
<u>781.312(b)</u>				<u>X</u>
<u>781.313(b)</u>				<u>X</u>
<u>781.316(a), (c), and (d)</u>				<u>X</u>
<u>781.317(a)</u>				<u>X</u>
<u>781.317(b)</u>			<u>X</u>	
<u>781.320(e)</u>			<u>X</u>	
<u>781.321(d)</u>			<u>X</u>	
<u>781.321(ff)</u>			<u>X</u>	
<u>781.322(f)</u>			<u>X</u>	
<u>781.322(g)</u>		<u>X</u>		
<u>781.322(h)(1) and (2)</u>				<u>X</u>
<u>781.322(i)</u>			<u>X</u>	
<u>781.404(b)(1)</u>			<u>X</u>	
<u>781.404(b)(7)</u>		<u>X</u>		
<u>781.404(b)(8)(A)</u>				<u>X</u>
<u>781.404(b)(8)(C)</u>				<u>X</u>

<u>781.404(b)(8)(E) and (L)</u>				<u>X</u>
<u>781.404(b)(8)(F)</u>				<u>X</u>
<u>781.404(b)(8)(H)</u>			<u>X</u>	
<u>781.404(b)(8)(J)</u>		<u>X</u>		
<u>781.404(b)(8)(K)</u>				<u>X</u>
<u>781.404(b)(8)(M)</u>		<u>X</u>		
<u>781.404(b)(8)(N) and (O)</u>	<u>X</u>			
<u>781.404(b)(8)(P)</u>				<u>X</u>
<u>781.404(b)(9)(G)</u>				<u>X</u>
<u>781.404(b)(10)(B)</u>			<u>X</u>	

Figure: 22 TAC §801.305

Rule	Level 1: Revocation	Level 2: Suspension	Level 3: Probated Suspension	Level 4: Reprimand
801.43(b)				X
801.43(c)				X
801.43(d)				X
801.43(g)				X
801.44(a)				X
801.44(b)				X
801.44(c)				X
801.44(d)				X
801.44(e)		X		
801.44(f)			X	
801.44(g)			X	
801.44(h)				X
801.44(i)				X
801.44(k)				X
801.44(l)				X
801.44(m)				X
801.44(n)			X	X
801.44(o)				X
801.44(p)			X	
801.44(q)			X	
801.44(s)				X
801.44(t)		X		
801.44(u)				X
801.44(v)		X		
801.45(b)	X			
801.45(c)	X			
801.45(d)	X			
801.46(a)				X
801.46(c)			X	
801.47(a)		X		
801.47(b)	X			
801.48(b)			X	
801.48(c)			X	
801.48(d)(1)-(3)			X	
801.48(d)(4)				X
801.48(e)				X
801.48(g)			X	
801.48(h)				X

801.50				X
801.53(a)				X
801.53(d)				X
801.53(e)				X
801.53(f)				X
801.53(g)				X
801.55(e)			X	
801.56(d)			X	
801.57(d)			X	
801.57(e)		X		
801.57(f)				X
801.57(g)			X	
801.58(d)				X
801.58(h)				X
801.58(i)			X	
801.143(b)				X
801.143(c)				X
801.143(d)				X
801.143(e)				X
801.143(f)(1)				X
801.143(f)(2)				X
801.143(f)(4)				X
801.143(f)(5)				X
801.143(h)				X
801.143(i)			X	
801.143(j)				X
801.143(k)			X	

Figure: 22 TAC §885.1(b)(1)

<u>Fees</u>	<u>Total Fee</u>	<u>Base</u>	<u>Texas.gov</u>	<u>OPP</u>	<u>eStrategy</u>
APPLICATION FEES (Effective for applications submitted before 9/1/23)					
Social Workers					
LBSW or LMSW Application	\$ 109.00	\$ 100.00	\$ 4.00	\$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	\$ 129.00	\$ 120.00	\$ 4.00	\$ 5.00	
Upgrade from LBSW to LMSW	\$ 24.00	\$ 20.00	\$ 4.00		
Upgrade from LMSW to LCSW	\$ 24.00	\$ 20.00	\$ 4.00		
Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Temporary License Application	\$ 30.00 \$ 34.00	\$ 30.00	\$ 4.00		
Marriage and Family Therapists					
Initial LMFT Associate Application	\$ 159.00	\$ 150.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 85.00	\$ 5.00		
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Professional Counselors					
LPC Associate/LPC/Provisional License Application	\$ 221.00	\$ 210.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Art Therapy Designation	\$ 20.00	\$ 20.00			
Psychologists/Psychological Associates/Specialists in School Psychology					
LPA Application	\$ 333.00	\$ 320.00	\$ 8.00	\$ 5.00	
LP Application	\$ 460.00	\$ 445.00	\$ 10.00	\$ 5.00	
LP License Issuance Fee	\$ 391.00	\$ 381.00	\$ 10.00		
LSSP Application	\$ 288.00	\$ 275.00	\$ 8.00	\$ 5.00	
Temporary License Application	\$ 103.00	\$ 100.00	\$ 3.00		
RENEWAL FEES					
Social Workers					
LBSW/LMSW Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	

LMSW-AP/LCSW Renewal	\$ 163.00	\$ 155.00	\$ 6.00	\$ 2.00
Additional Renewal Fee fir Independent Recognition	\$ 20.00	\$ 20.00		
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00		
Marriage and Family Therapists				
LMFT/LMFT Associate Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00		
LMFT Associate Extension	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Professional Counselors				
LPC Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00		
Psychologists/Psychological Associates/Specialists in School Psychology				
LPA Renewal	\$ 238.00	\$ 230.00	\$ 6.00	\$ 2.00
LP Renewal	\$ 424.00	\$ 412.00	\$ 10.00	\$ 2.00
LSSP Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Over 70 Renewal – Applicable only to licensees who turned 70 by 8/31/2020	\$ 26.00	\$ 20.00	\$ 4.00	\$ 2.00
Additional Renewal Fee for HSP Designation	\$ 40.00	\$ 40.00		
<u>EXAMINATION FEES</u>				
Social Workers				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00
Marriage and Family Therapists				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00
Professional Counselor				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00
Psychologists/Psychological Associates/Specialist in School Psychology				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00

MISCELLANEOUS FEES					
Duplicate Renewal Permit or License	\$ 10.00	\$ 8.00	\$ 2.00		
Written Verification of License	\$ 10.00				
Written State to State Verification of License	\$ 50.00	\$ 48.00	\$ 2.00		
Mailing List	\$ 10.00	\$ 8.00	\$ 2.00		
Returned Check Fee	\$ 25.00				
Criminal History Evaluation	\$ 150.00	\$ 154.00	\$ 4.00		
Reinstate of License	\$ 510.00	\$ 500.00	\$ 10.00		
Request for Inactive Status	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00	
Inactive Status Renewal (biennial)	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00	
Request to Reactivate License from Inactive Status	equal to current renewal fee				
Late fee for license expired 90 days or less	equal to 1.5 times base renewal fee (plus applicable Texas.gov and OPP fees)				
Late fee for license expired more than 90 days, but less than one year	Equal to 2 times the base renewal fee (plus applicable Texas.gov and OPP fees)				

Figure: 22 TAC §885.1(b)(2)

<u>Fees</u>	<u>Total Fee</u>	<u>Base</u>	<u>Texas.gov</u>	<u>OPP</u>	<u>eStrategy</u>
APPLICATION FEES (Effective for applications submitted after 8/31/23)					
Social Workers					
LBSW or LMSW Application	\$ 109.00	\$ 100.00	\$ 4.00	\$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	\$ 120.00	\$ 111.00	\$ 4.00	\$ 5.00	
Upgrade from LBSW to LMSW	\$ 24.00	\$ 20.00	\$ 4.00		
Upgrade from LMSW to LCSW	\$ 24.00	\$ 20.00	\$ 4.00		
Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Temporary License Application	\$ 30.00	\$ 30.00			
Marriage and Family Therapists					
Initial LMFT Associate Application	\$ 159.00	\$ 150.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 85.00	\$ 5.00		
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Professional Counselors					
LPC Associate/LPC/Provisional License Application	\$ 165.00	\$ 154.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Art Therapy Designation	\$ 20.00	\$ 20.00			
Psychologists/Psychological Associates/Specialists in School Psychology					
LPA Application	\$ 144.00	\$ 135.00	\$ 4.00	\$ 5.00	
LP Application	\$ 425.00	\$ 410.00	\$ 10.00	\$ 5.00	
LSSP Application	\$ 252.00	\$ 239.00	\$ 8.00	\$ 5.00	
Temporary License Application	\$ 103.00	\$ 100.00	\$ 3.00		
RENEWAL FEES					
Social Workers					
LBSW/LMSW Renewal	\$ 108.00	\$ 102.00	\$ 4.00	\$ 2.00	
LMSW-AP/LCSW Renewal	\$ 108.00	\$ 102.00	\$ 4.00	\$ 2.00	

<u>Additional Renewal Fee fir Independent Recognition</u>	\$ 20.00	\$ 20.00			
<u>Additional Renewal Fee for Supervisor Status</u>	\$ 50.00	\$ 50.00			
<u>Marriage and Family Therapists</u>					
<u>LMFT/LMFT Associate Renewal</u>	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
<u>Additional Renewal Fee for Supervisor Status</u>	\$ 50.00	\$ 50.00			
<u>LMFT Associate Extension</u>	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
<u>Professional Counselors</u>					
<u>LPC Renewal</u>	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
<u>Additional Renewal Fee for Supervisor Status</u>	\$ 50.00	\$ 50.00			
<u>Psychologists/Psychological Associates/Specialists in School Psychology</u>					
<u>LPA Renewal</u>	\$ 238.00	\$ 230.00	\$ 6.00	\$ 2.00	
<u>LP Renewal</u>	\$ 295.00	\$ 285.00	\$ 8.00	\$ 2.00	
<u>LSP Renewal</u>	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	
<u>Over 70 Renewal – Applicable only to licensees who turned 70 by 8/31/2020</u>	\$ 26.00	\$ 20.00	\$ 4.00	\$ 2.00	
<u>Additional Renewal Fee for HSP Designation</u>	\$ 40.00	\$ 40.00			
<u>EXAMINATION FEES</u>					
<u>Social Workers</u>					
<u>Jurisprudence Exam</u>	\$ 39.00	\$ 5.00			\$ 34.00
<u>Marriage and Family Therapists</u>					
<u>Jurisprudence Exam</u>	\$ 39.00	\$ 5.00			\$ 34.00
<u>Professional Counselor</u>					
<u>Jurisprudence Exam</u>	\$ 39.00	\$ 5.00			\$ 34.00
<u>Psychologists/Psychological Associates/Specialist in School Psychology</u>					
<u>Jurisprudence Exam</u>	\$ 39.00	\$ 5.00			\$ 34.00
<u>MISCELLANEOUS FEES</u>					

Duplicate Renewal Permit or License	\$ 10.00	\$ 8.00	\$ 2.00
Written Verification of License	\$ 10.00		
Written State to State Verification of License	\$ 50.00	\$ 48.00	\$ 2.00
Mailing List	\$ 10.00	\$ 8.00	\$ 2.00
Returned Check Fee	\$ 25.00		
Criminal History Evaluation	\$ 150.00	\$ 150.00	
Reinstate of License	\$ 510.00	\$ 500.00	\$ 10.00
Request for Inactive Status	\$ 106.00	\$ 100.00	\$ 4.00
Inactive Status Renewal (biennial)	\$ 106.00	\$ 100.00	\$ 4.00
Request to Reactivate License from Inactive Status	equal to current renewal fee		
Late fee for license expired 90 days or less	equal to 1.5 times base renewal fee (plus applicable Texas.gov and OPP fees)		
Late fee for license expired more than 90 days, but less than one year	Equal to 2 times the base renewal fee (plus applicable Texas.gov and OPP fees)		

Texas Animal Health Commission

Administrative Penalty and Sanction Policy

Effective Date: August 1, 2022

Penalty and Sanction Policy

This penalty and sanction policy is established by the Texas Animal Health Commission pursuant to the Texas Agriculture Code, §161.148. This policy describes the specific ranges of penalties and sanctions that apply to specific alleged violations of the statutes and rules enforced by the Texas Animal Health Commission (hereinafter "TAHC" or "the Commission"). This policy also presents the criteria that are considered by the Commission's legal and compliance staff in determining the amount of an administrative penalty or the magnitude of a sanction to be pursued.

I. Content of the Policy

This policy contains a brief description of each individual violation that may be committed, a citation to the statute and rule provision for each violation, and a range of penalties and/or sanctions applicable to each violation. The violations are organized into levels, which denote the relative seriousness of the offenses. A range of penalties and sanctions is presented for each level of violation and organized by table. Specifically, a range is presented for the first, second, and third and subsequent occurrence of each class of violation. For purposes of this policy, a previous complaint alleging a violation of the statute or rules is counted as a "violation" only if it resulted in a formal disciplinary action by the Commission: an Agreed Order, a Final Order, Suspension or Revocation.

The administrative penalty amounts presented for each level of violation will be pursued on a "per violation" basis. In other words, if a Respondent commits three violations of the same class, he will be subject to a maximum penalty of three times the highest dollar amount specified in the range.

Where both a penalty and a sanction are provided, a connector of "and/or" indicates that the Commission has discretion to pursue only a penalty, only a sanction, or both a penalty and a sanction.

II. Statutes and Rules Referenced in the Policy

This policy conforms with the statutes and rules currently in effect on the date the policy is published. The policy will be revised periodically to reflect changes in statutes and rules. The majority of the violations referenced in the policy will arise from the statute and rules specific to that program. The policy also contains some references to violations arising under TAHC's enabling statute, Chapter 161 of the Agriculture Code, and the rules attendant to that statute, Title 4 Texas Administrative Code, Chapters 31-60.

While this policy is intended to present a fairly comprehensive list of the violations, by section, that may be committed under the current statutes and rules, the policy does not in any way restrict or limit the Commission's authority to pursue violations that may have been omitted from the policy.

III. Applicability of the Policy

The purpose of the policy is to establish a structure within which TAHC's legal and compliance staff will make decisions about the relief to be sought in their cases. The policy is not binding upon the Commission and Executive Director when acting as the final decision-makers in contested cases. The Commission and Executive Director are bound only by the limits of the law, specifically, Chapter 161 of the Texas Agriculture Code and the individual program statutes administered by TAHC.

TAHC's legal and compliance staff are generally expected to seek penalties and sanctions that are within the administrative penalty levels and ranges presented in this policy. Pursuit of a penalty or sanction outside the stated range is permitted only with the express approval of the Commission's General Counsel, when exceptional circumstances warrant a departure from the policy.

IV. Factors to be Considered by the Commission

In determining the amount of a proposed administrative penalty or the degree of a proposed sanction to be assessed within the administrative penalty levels and ranges presented, the Commission will consider the following factors:

- (1) The seriousness of the violation, including the nature, circumstances, extent and gravity of prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public.
- (2) Whether the violation was willful or intentional.
- (3) The economic harm to property or the environments caused by the violation.
- (4) The history of previous violations.
- (5) The amount necessary to deter future violations.
- (6) Efforts to correct the violation.
- (7) Any other matter that justice may require.

Administrative Penalty and Sanction Levels and Ranges

Figure 1: Administrative Penalty and Sanction Levels and Ranges

Level 1 Penalties and Sanctions (L1)	
1 st violation	Warning letter to \$200
2 nd violation	\$200 - \$600
3 rd & subsequent violations	\$600 - \$1,800 and/or suspension or revocation

Level 2 Penalties and Sanctions (L2)	
1 st violation	\$200 - \$600
2 nd violation	\$600 - \$1,800 and/or suspension or revocation
3 rd & subsequent violations	\$1,800 - \$5,000 and/or suspension or revocation

Level 3 Penalties and Sanctions (L3)	
1 st violation	\$600 - \$1,800 and/or suspension or revocation
2 nd violation	\$1,800 - \$3,600 and/or suspension or revocation
3 rd & subsequent violations	\$5,000 and/or suspension or revocation

Level 4 Penalties and Sanctions (L4)	
1 st violation	Warning letter, status reduction or revocation
2 nd & subsequent violations	Status reduction or revocation

Violations

Figure 2: Violations

Violation Description	Texas Statute or Rule	Penalty/ Sanction Level
Chapter 31 Anthrax		
Failure to prepare anthrax sample	4 TAC 31.1	L2
Failure to maintain records	4 TAC 31.1	L2
Failure to maintain complete records	4 TAC 31.1	L1
Failure to comply with quarantine requirements	4 TAC 31.2	L3
Failure to properly dispose of animals that have died from anthrax	4 TAC 31.3	L2
Chapter 34 Veterinary Biologics		
Failure to obtain Executive Director approval prior to importing a veterinary biologic for sale, use, or distribution within the state.	4 TAC 34.2	L3
Chapter 35 Brucellosis		
Failure to comply with general brucellosis requirements - cattle	4 TAC 35.2	L2
Failure to collect blood sample	4 TAC 35.2(f)	L1
Failure to comply with identification requirements	4 TAC 35.2(q)	L1
Unauthorized removal of official identification	4 TAC 35.1(28)	L2
Failure to maintain records	4 TAC 35.2(u)	L2
Failure to maintain complete records	4 TAC 35.2(u)	L1
Failure to comply with possession of certificate or permit requirements	4 TAC 35.2 or 35.4	L1
Failure to comply with entry, movement or change of ownership requirements.	4 TAC 35.4	L1
Failure to comply with movement restrictions	4 TAC 35.4	L3
Failure to dispose of equine brucellosis reactors	4 TAC 35.7	L3
Unauthorized collection of blood samples	4 TAC 35.43	L3
Failure to report test results	4 TAC 35.43	L2
Failure to report test results within 48 hours	4 TAC 35.43	L1
Failure to comply with identification or movement requirements for infected or exposed swine	4 TAC 35.44	L3
Failure to comply with procedures for handling infected, adjacent and high risk herds of swine	4 TAC 35.45	L3
Failure to comply with plans for eradicating brucellosis from infected swine herds	4 TAC 35.46	L2
Failure to provide assistance	4 TAC 35.47	L1
Failure to comply with conditions of validation or revalidation of swine herds	4 TAC 35.48	L1
Failure to comply with general brucellosis requirements - goats	4 TAC 35.61	L2
Failure to comply with general brucellosis requirements - cervidae	4 TAC 35.81	L2
Chapter 37 Screwworms		
Failure to comply with control and eradication requirements	4 TAC 37.1	L3
Failure to comply with possession of inspection certificate requirements	4 TAC 37.1	L1

Chapter 38 Trichomoniasis		
Failure to comply with general requirements	4 TAC 38.2	L2
Failure to comply with possession of breeder's certificate or permit requirements	4 TAC 38.2	L1
Failure to properly handle infected bull	4 TAC 38.2(d)(3)	L3
Failure to comply with identification requirements	4 TAC 38.2(b) or (d)	L1
Failure to comply with infected herd requirements	4 TAC 38.3	L3
Failure to comply with adjacent herd requirements	4 TAC 38.3(f)	L2
Failure to comply with certified veterinary practitioner requirements	4 TAC 38.4	L2
Failure to comply with official laboratories requirements	4 TAC 38.5	L1
Failure to report test results	4 TAC 38.5	L2
Failure to report test results within 48 hours	4 TAC 38.5	L1
Failure to comply with official trichomoniasis tests requirements	4 TAC 38.6	L2
Failure to comply with herd certification program-breeding bulls	4 TAC 38.8	L2
Chapter 39 Scabies and Mange Mites		
Failure to properly treat infested or exposed livestock	4 TAC 39.2	L3
Failure to maintain records	4 TAC 39.2	L2
Failure to maintain complete records	4 TAC 39.2	L1
Failure to properly handle treated livestock	4 TAC 39.2	L2
Failure to comply with quarantine requirements	4 TAC 39.3	L3
Failure to comply with duties of owners and caretakers of livestock infested with or exposed to scabies or mange mites	4 TAC 39.4	L2
Failure to properly handle infested or exposed livestock at shows, fairs, or exhibitions	4 TAC 39.5	L1
Failure to comply with permitted dips for scabies and mange mite eradication requirements	4 TAC 39.6	L2
Chapter 40 Chronic Wasting Disease		
Failure to comply with general requirements	4 TAC 40.2	L2
Failure to comply with herd status requirements	4 TAC 40.2	L2
Failure to comply with general requirements	4 TAC 40.3	L4
Failure to comply with carcass movement restrictions	4 TAC 40.4	L2
Failure to comply with surveillance and movement requirements for exotic CWD susceptible species	4 TAC 40.5	L2
Failure to comply with identification requirements	4 TAC 40.5(c)	L1
Failure to maintain records	4 TAC 40.5	L2
Failure to maintain complete records	4 TAC 40.5	L1
Failure to comply with CWD movement restriction zones requirements	4 TAC 40.6	L3
Failure to comply with Executive Director declaration of a CWD movement restriction zone requirements	4 TAC 40.7	L3
Chapter 41 Fever Ticks		
Failure to comply with livestock movement requirements	4 TAC 41.5	L2
Failure to comply with possession of certificate or permit requirements	4 TAC 41.5, 41.7 or 41.12	L2
Failure to comply with livestock movement restrictions	4 TAC 41.6	L3
Failure to comply with identification requirements	4 TAC 41.6(b) or 41.9(e-f)	L1
Failure to comply with movement restrictions on hides or carcasses	4 TAC 41.7	L2
Failure to comply with dipping, treatment, and vaccination requirements	4 TAC 41.8	L2
Failure to comply with vacation or inspection of a premise requirements	4 TAC 41.9	L2
Failure to properly handle conveyances, materials, hay, feed, and other commodities	4 TAC 41.10	L2
Failure to comply with requirements for cattle or products imported from Mexico	4 TAC 41.12	L2

Chapter 43 Tuberculosis		
Failure to comply with tuberculosis general requirements	4 TAC 43.2	L2
Failure to comply with movement restrictions	4 TAC 43.2(b)	L3
Failure to maintain records	4 TAC 43.2(h)	L2
Failure to maintain complete records	4 TAC 43.2(h)	L1
Failure to comply with identification requirements	4 TAC 43.2(e) or (n)	L1
Failure to comply with approved feedyards or approved pens requirements	4 TAC 43.3	L3
Failure to comply with requirements for increased risk herds or animals	4 TAC 43.4	L3
Failure to comply with dairy calf ranch requirements	4 TAC 43.6	L2
Failure to comply with authorized calf ranch or authorized grower facility requirements	4 TAC 43.7	L3
Failure to maintain records	4 TAC 43.6 or 43.7	L2
Failure to maintain complete records	4 TAC 43.6 or 43.7	L1
Failure to comply with goat accredited herd plan requirements	4 TAC 43.11	L1
Failure to comply with cervidae general requirements	4 TAC 43.21	L2
Failure to comply with cervidae herd status plan requirements	4 TAC 43.22	L1
Failure to comply with movement restriction zone testing requirements	4 TAC 43.31	L2
Chapter 44 Bovine Viral Diarrhea		
Failure to comply with general requirements	4 TAC 44.2(a)	L1
Chapter 45 Reportable Diseases		
Failure to report reportable disease	4 TAC 45.2	L3
Failure to report reportable disease within 24 hours	4 TAC 45.2	L1
Failure to report required information	4 TAC 45.2	L2
Failure to report complete information	4 TAC 45.2	L1
Chapter 46 Export-Import Facilities		
Failure to report refused export out of Texas or entry into another country	4 TAC 46.2	L1
Failure to maintain records	4 TAC 46.3	L2
Failure to maintain complete records	4 TAC 46.3	L1
Failure to comply with possession of certificate or permit requirements for movement	4 TAC 46.4	L2
Chapter 47 Authorized Personnel		
Failure to comply with authorized personnel requirements-unauthorized practice	4 TAC 47.2	L2
Failure to comply with training requirements	4 TAC 47.3	L2
Failure to comply with standards for authorized personnel	4 TAC 47.4	L2
Failure to comply with recordkeeping requirements	4 TAC 47.5	L2
Failure to maintain official documents	4 TAC 47.5	L2
Failure to maintain complete official documents	4 TAC 47.5	L1
Violation that is grounds for suspension or revocation	4 TAC 47.6	L3
Failure to comply with brucellosis program general requirements	4 TAC 47.12	L2
Failure to comply with brucellosis testing requirements	4 TAC 47.13	L2
Failure to comply with brucellosis calthood vaccination requirements	4 TAC 47.14	L2
Violation that is grounds for suspension or revocation of brucellosis authorized personnel status	4 TAC 47.15	L3
Failure to comply with CWD authorized personnel general requirements	4 TAC 47.22	L2
Failure to comply with training requirements	4 TAC 47.23	L1
Violation that is grounds for suspension or revocation	4 TAC 47.24	L3

Chapter 49 Equine		
Failure to comply with equine infectious anemia requirements	4 TAC 49.1	L2
Failure to comply with quarantine requirements	4 TAC 49.1(g) or (i)	L3
Failure to properly handle reactors or exposed equine	4 TAC 49.1(d), (f), (h) or (j)	L2
Failure to comply with change of ownership requirements	4 TAC 49.1(l)	L2
Failure to comply with testing requirements	4 TAC 49.1(n - q)	L1
Failure to comply with testing requirements-racetracks	4 TAC 49.1(r) or 49.5(d)	L2
Failure to comply with possession of certificate requirements	4 TAC 49.1	L1
Failure to maintain records	4 TAC 49.3(c-d)	L2
Failure to maintain complete records	4 TAC 49.3(c-d)	L1
Failure to comply with equine viral arteritis reporting or handling of infected equine requirements	4 TAC 49.4	L3
Failure to comply with piroplasmiasis testing, Identification of infected equine requirements	4 TAC 49.5	L2
Failure to comply with piroplasmiasis area or county test requirements	4 TAC 49.6	L2
Chapter 50 Animal Disease Traceability		
Failure to comply with approved tagging site requirements	4 TAC 50.2	L2
Failure to maintain records	4 TAC 50.2	L2
Failure to maintain complete records	4 TAC 50.2	L1
Failure to comply with cattle identification requirements	4 TAC 50.3	L1
Chapter 51 Entry Requirements		
Failure to comply with general requirements	4 TAC 51.2	L1
Failure to comply with possession of certificate or permit requirements	4 TAC 51.2, 51.4, 51.5, 51.7, 51.8, 51.9, 51.10, 51.11, 51.12, 51.13, 51.14, or 51.15	L1
Failure to comply with entry requirements for shows, fairs or exhibitions	4 TAC 51.4	L1
Failure to comply with equine entry testing requirements-racetracks	4 TAC 51.4(b)(1)	L2
Failure to comply with movement of quarantined animal requirements	4 TAC 51.5	L3
Failure to comply with special requirements	4 TAC 51.6	L1
Failure to permit inspection or testing	4 TAC 51.6	L2
Failure to comply with all livestock -special requirements	4 TAC 51.7	L1
Failure to comply with all livestock special quarantine requirements	4 TAC 51.7(a) or (d)	L3
Failure to comply with cattle requirements	4 TAC 51.8	L1
Failure to comply with exotic livestock and fowl requirements	4 TAC 51.9	L1
Failure to comply with exotic livestock and fowl quarantine requirements	4 TAC 51.9(b)(1)	L3
Failure to comply with cervidae requirements	4 TAC 51.10	L1
Failure to comply with cervidae quarantine requirements	4 TAC 51.10	L3
Failure to comply with goat requirements	4 TAC 51.11	L1
Failure to comply with sheep requirements	4 TAC 51.12	L1
Failure to comply with equine requirements	4 TAC 51.13	L1
Failure to comply with swine requirements	4 TAC 51.14	L1
Failure to comply with poultry requirements	4 TAC 51.15	L1
Failure to comply with entry requirements by a dealer	4 TAC 51.2 - 51.15	L2
Failure to comply with quarantine requirements by a dealer	4 TAC 51.2 - 51.15	L3
Chapter 53 Market Regulations		
Failure to comply with facilities requirements	4 TAC 53.1(a-c)	L1
Failure to comply with release of animal requirements	4 TAC 53.2	L2
Failure to comply with quarantine or hold order requirements	4 TAC 53.3	L3
Failure to comply with market identification requirements	4 TAC 53.4	L1
Failure to maintain records	4 TAC 53.5	L3
Failure to maintain complete records	4 TAC 53.5	L2

Chapter 54 Domestic and Exotic Fowl Registration		
Failure to comply with registration requirements	4 TAC 54.2	L2
Failure to comply with program requirements	4 TAC 54.5	L2
Failure to comply with possession of certificate or permit requirements	4 TAC 54.5	L1
Failure to permit inspection	4 TAC 54.5(b)	L2
Failure to report reportable disease	4 TAC 54.5(c)(2)	L3
Failure to timely report reportable disease	4 TAC 54.5(c)(2)	L3
Failure to comply with recordkeeping requirements	4 TAC 54.6	L2
Failure to maintain records	4 TAC 54.6 or 54.9	L2
Failure to maintain complete records	4 TAC 54.6 or 54.9	L1
Failure to permit inspection	4 TAC 54.6, 54.7, 54.9	L2
Failure to comply with movement and testing requirements	4 TAC 54.7	L2
Failure to comply with quarantine or hold order requirements	4 TAC 54.7(a)	L3
Failure to comply with live bird market system requirements	4 TAC 54.9	L2
Chapter 55 Swine		
Failure to comply with testing breeding swine prior to sale or change of ownership requirements	4 TAC 55.1	L1
Failure to comply with vaccine restrictions	4 TAC 55.2	L3
Failure to comply with feeding of garbage requirements	4 TAC 55.3	L1
Failure to comply with livestock markets handling swine requirements	4 TAC 55.4	L2
Failure to comply with identification requirements	4 TAC 55.4, 55.5 or 55.9	L1
Failure to comply with pseudorabies requirements	4 TAC 55.5	L2
Failure to comply with possession of certificate or permit requirements	4 TAC 55.6	L1
Failure to comply with quarantine or hold order requirements	4 TAC 55.5(e)	L3
Failure to comply with slaughter plant requirements	4 TAC 55.7	L2
Failure to comply with feral swine requirements	4 TAC 55.9	L1
Failure to maintain records	4 TAC 55.8 or 55.9	L2
Failure to maintain complete records	4 TAC 55.8 or 55.9	L1
Failure to comply with feral swine requirements-authorized holding facility or hunting preserve	4 TAC 55.9(c) or (d)	L2
Chapter 57 Poultry		
Failure to comply with general requirements	4 TAC 57.11	L1
Failure to comply with possession of certificate or permit requirements	4 TAC 57.11	L1
Failure to comply with quarantine requirements	4 TAC 57.11	L3
Failure to maintain records	4 TAC 57.12	L2
Failure to maintain complete records	4 TAC 57.12	L1
Failure to permit inspection	4 TAC 57.12	L2
Chapter 58 Emergency Response and Management		
Failure to comply with disease control requirements	4 TAC 58.2	L1
Failure to comply with general requirements	4 TAC 58.3	L3
Failure to maintain records	4 TAC 58.3	L2
Failure to maintain complete records	4 TAC 58.3	L1
Failure to permit inspection	4 TAC 58.3	L2
Failure to comply with establishment of quarantine requirements	4 TAC 58.11	L2
Failure to comply with livestock movement restriction requirements	4 TAC 58.21	L3
Failure to comply with disposal of diseased or exposed livestock requirements	4 TAC 58.31	L2
Chapter 59 General Practices and Procedures		
Failure to comply with Executive Order of a high risk disease movement restriction zone requirement	4 TAC 59.11	L3
Failure to comply with carcass disposal requirements	4 TAC 59.12	L2

Chapter 60 Scrapie		
Failure to comply with identification requirements	4 TAC 60.2	L1
Failure to maintain records	4 TAC 60.2	L2
Failure to maintain complete records	4 TAC 60.2	L1
Failure to comply with monitoring and surveillance requirements	4 TAC 60.4	L2
Failure to comply with movement restrictions or quarantine requirements	4 TAC 60.4 or 60.5	L3
Failure to comply with management of affected and source flocks, and exposed, high-risk, and suspect animal requirements	4 TAC 60.5	L2
Failure to comply with requirements for flock plans, post-exposure, pilot project flock plans and monitoring flock plans	4 TAC 60.6	L2
Failure to comply with exhibition requirements	4 TAC 60.7	L1
Texas Agriculture Code Chapter 161		
General Disease and Pest Control		
Document to accompany shipment	161.006	L1
Disposal of diseased or exposed livestock or fowl	161.0415	L2
Sale and distribution of veterinary biologics	161.042	L3
Animal identification program	161.056	L1
Persons or laboratories performing equine infectious anemia tests.	161.0602	L2
Dealer Enhancement		
Failure to comply with any violation listed in this penalty policy by a dealer will result in the penalty being enhanced to the next highest penalty level.		L1 to L2 L2 to L3 L3 not enhanced L4 not enhanced

TRD-202202831
Mary Luedeker
General Counsel
Texas Animal Health Commission
Filed: July 27, 2022

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil-June 2022

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period June 2022 is \$72.70 per barrel for the three-month period beginning on March 1, 2022, and ending May 31, 2022. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of June 2022, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2022 is \$4.73 per mcf for the three-month period beginning on March 1, 2022, and ending May 31, 2022. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2022, from a qualified low-producing well, is not eligible for credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2022 is \$114.34 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2022, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2022 is \$7.60 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from gas produced during the month of June 2022, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on July 27, 2022.

TRD-202202830
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: July 27, 2022

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Notice to Persons Interested in Energy Efficiency Building Codes for Residential, Commercial, and Industrial Construction

Pursuant to 34 TAC §19.52, the State Energy Conservation Office ("SECO") published notice in the February 4, 2022, issue of the *Texas Register* (47 TexReg 543) to all persons interested in energy efficiency building codes for residential, commercial, and industrial construction. The notice informed the public of the opportunity to provide comments regarding the energy efficiency provisions of the 2021 International Residential Code, promulgated by the International Code Council and published January 2021, for single-family residential construction. The notice also informed the public of the opportunity to provide comments on the 2021 International Energy Conservation Code, promulgated by the International Code Council and published January 2021, for all commercial and industrial construction and in residential construction other than single-family residential construction. The notice encouraged persons interested in energy efficiency building codes for residential, commercial, and industrial construction (specifically including, without limitation, commercial and residential builders; architects and engineers; municipal, county, and other local government authorities; environmental groups; and manufacturers of building materials and products) to provide written comments to SECO in person, electronically, or by mail, regarding the code under consideration. The notice further stated that any such comments submitted to SECO would be forwarded no later than 30 days following the notice publication date to the Energy Systems Laboratory at the Texas Engineering Experiment Station of the Texas A&M University System (the "Laboratory"). In accordance with Texas Health and Safety Code, §388.003(b-3), the Laboratory shall consider such comments in developing written findings for SECO regarding the stringency of the 2021 International Residential Code and the 2021 International Energy Conservation Code.

SECO declines to adopt the 2021 International Residential Code and the 2021 International Energy Conservation Code at this time, but may revisit the adoption process at a later date. SECO encourages ongoing code training to support local jurisdiction energy conservation efforts in the areas of residential, commercial, and industrial construction.

SECO appreciates the feedback provided by persons interested in energy efficiency building codes for residential, commercial, and industrial construction in Texas, and values the participation of all affected parties. For more information about the International Residential Code and International Energy Conservation Code, training opportunities, compliance strategies, and other resources, please visit the Comptroller of Public Accounts website at:

<https://comptroller.texas.gov/programs/seco/code/compliance-training.php>

Issued in Austin, Texas, on July 26, 2022.

TRD-202202794

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Filed: July 26, 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 08/01/22 - 08/07/22 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/22 - 08/07/22 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-202202802

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 26, 2022

◆ ◆ ◆

Court of Criminal Appeals

Final Approval of Amendments to Texas Rules of Appellate Procedure 38.1(a), 52.3(a), 53.2(a), and 55.2(a)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

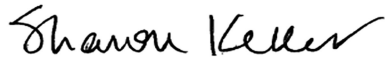
Misc. Docket No. 22-005

**Final Approval of Amendments to Texas Rules of Appellate Procedure 38.1(a), 52.3(a),
53.2(a), and 55.2(a)**


ORDERED that:

1. On April 8, 2022, the Supreme Court of Texas (in Misc. Docket No. 22-9029), preliminarily approved amendments to Texas Rules of Appellate Procedure 38.1(a), 52.3(a), 53.2(a), and 55.2(a) and invited public comment.
2. Following public comment, the Supreme Court revised those amendments. This Order incorporates the revisions and contains the final version of the rules, effective August 1, 2022.
3. The amendments to Rules 38.1(a), 52.3(a), 53.2(a), and 55.2(a) are demonstrated in redline and clean form.
4. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

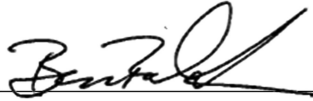
Dated: July 25, 2022.



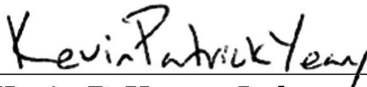
Sharon Keller, Presiding Judge



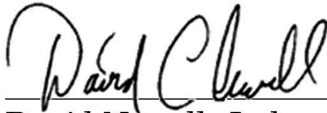
Barbara P. Hervey, Judge



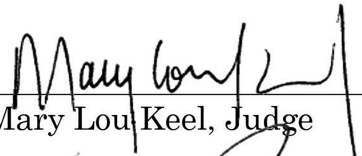
Bert Richardson, Judge



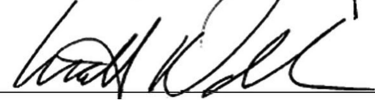
Kevin P. Yeary, Judge



David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge



Michelle Slaughter, Judge



Jesse F. McClure, Judge

Redline Version

Rule 38. Requisites of Briefs

38.1. Appellant's Brief

The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

- (a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's judgment or order appealed from, ~~and~~ except as otherwise provided in Rule 9.8. The brief must also give a complete list of the names and addresses of all trial and appellate counsel, except as otherwise provided in Rule 9.8 appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes their firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 52. Original Proceedings

52.3. Form and Contents of Petition

The petition must, under appropriate headings and in the order here indicated, contain the following:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties, ~~and~~. The petition must also give a complete list of the names, and addresses of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 53. Petition for Review

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties to the trial court's final judgment, ~~and the names and addresses of all trial and appellate counsel.~~ The petition must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 55. Briefs on the Merits

55.2. Petitioner's Brief on the Merits

The petitioner's brief on the merits must be confined to the issues or points stated in the petition for review and must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's final judgment, ~~and the names and addresses of all trial and appellate counsel.~~ The brief must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 38. Requisites of Briefs

38.1. Appellant's Brief

The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

- (a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's judgment or order appealed from, except as otherwise provided in Rule 9.8. The brief must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes their firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 52. Original Proceedings

52.3. Form and Contents of Petition

The petition must, under appropriate headings and in the order here indicated, contain the following:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties. The petition must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 53. Petition for Review

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The petition must give a complete list of all parties to the trial court's final judgment. The petition must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

Rule 55. Briefs on the Merits

55.2. Petitioner's Brief on the Merits

The petitioner's brief on the merits must be confined to the issues or points stated in the petition for review and must, under appropriate headings and in the order here indicated, contain the following items:

- (a) *Identity of Parties and Counsel.* The brief must give a complete list of all parties to the trial court's final judgment. The brief must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

TRD-202202804

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 6, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 6, 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: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2021-1513-AIR-E; IDENTIFIER: RN100233998; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 73110, Special Conditions Number 1, Federal Operating Permit Number O1735, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$12,300; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (210) 490-3096.

(2) COMPANY: ARGUAMOR INCORPORATED dba MORENO'S EXXON; DOCKET NUMBER: 2022-0354-PST-E; IDENTIFIER: RN102015351; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing

to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: \$5,969; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Bell County Water Control and Improvement District 3; DOCKET NUMBER: 2021-1649-PWS-E; IDENTIFIER: RN101425759; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps that have a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; and 30 TAC §290.110(c)(5) and (D)(i), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$1,487; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Chandler Loop Investments LLC dba Flashmart #1; DOCKET NUMBER: 2022-0143-PST-E; IDENTIFIER: RN102362217; LOCATION: Tyler, Smith 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: \$3,563; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Chase Bailey dba Landshark Burgers; DOCKET NUMBER: 2022-0364-PWS-E; IDENTIFIER: RN111433504; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's well into service; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: \$1,063; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Christian Heritage Classical School; DOCKET NUMBER: 2022-0254-PWS-E; IDENTIFIER: RN101182277; LOCATION: Longview, Gregg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the Executive Director prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.45(d)(2)(B)(ii) and THSC, §341.0315(c), by failing to provide ground storage capacity equal to 50% of the maximum daily demand; and 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent level for corrosivity of non-corrosive; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Circle K Stores Incorporated; DOCKET NUMBER: 2022-0367-AIR-E; IDENTIFIER: RN102438520; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §114.100(a) and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1, 2021 through March 31, 2022; PENALTY: \$8,438; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: Circle K Stores Incorporated; DOCKET NUMBER: 2022-0368-AIR-E; IDENTIFIER: RN111139002; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §114.100(a) and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1, 2021 through March 31, 2022; PENALTY: \$8,663; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: City of Commerce; DOCKET NUMBER: 2020-1201-MWD-E; IDENTIFIER: RN102178233; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010555001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$68,249; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$54,600; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Ore City; DOCKET NUMBER: 2019-1763-MWD-E; IDENTIFIER: RN101920122; LOCATION: Ore City, Upshur County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014389001, Contributing Industries and Pretreatment Requirements Number 3.b, by failing to notify the TCEQ within 30 days subsequent to the permittee's knowledge of a substantial change in the volume or character of pollutants being introduced into the treatment works at the time of issuance of the permit; and 30 TAC §305.125(1), (4), and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014389001, Operational Requirements Number 1 and Permit Conditions Number 2.d, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, and failing to take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$23,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,550; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: City of Tahoka; DOCKET NUMBER: 2021-1191-MWD-E; IDENTIFIER: RN103138079; LOCATION: Tahoka, Lynn County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010298002, Monitoring Requirements Number 5, by failing to have automatic flow measuring devices accurately calibrated by a trained person at plant start-up and thereafter not less often than annually; PENALTY: \$563; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512;

REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: EL CAMINO BAY PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2022-0332-PWS-E; IDENTIFIER: RN101199560; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes and with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11641 for calendar year 2021; PENALTY: \$2,925; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Estela Turner dba Cerro Alto Water System; DOCKET NUMBER: 2022-0328-PWS-E; IDENTIFIER: RN102672284; LOCATION: El Paso, Hudspeth County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$713; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(14) COMPANY: EUBANK EXCAVATION, L.L.C.; DOCKET NUMBER: 2022-0334-WQ-E; IDENTIFIER: RN111399614; LOCATION: Cut and Shoot, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$8,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Everman ISD; DOCKET NUMBER: 2022-0362-PST-E; IDENTIFIER: RN101570760; LOCATION: Everman, Tarrant County; TYPE OF FACILITY: fleet refueling facility; 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: LAMESA BUTANE COMPANY, INCORPORATED dba South Storage; DOCKET NUMBER: 2021-1639-PST-E; IDENTIFIER: RN101912103; LOCATION: Lamesa, Dawson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(17) COMPANY: Michael Rodriguez dba Oak Acres Mobile Home Park; DOCKET NUMBER: 2021-1407-PWS-E; IDENTIFIER: RN102323052; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c),

by failing to provide a well capacity of 1.5 gallons per minute per connection; PENALTY: \$425; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Michael Troy Taylor; DOCKET NUMBER: 2022-0206-PST-E; IDENTIFIER: RN102465853; LOCATION: Vidor, Orange County; TYPE OF FACILITY: out-of-service underground storage tank system; RULE VIOLATED: 30 TAC §334.54(e)(5)(B), by failing to perform a site check and any necessary corrective actions for a temporarily out-of-service underground storage tank system in order to meet financial assurance exemption requirements; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-497623615404; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: TA Operating LLC dba Petro Stopping Center 307; DOCKET NUMBER: 2021-1402-IHW-E; IDENTIFIER: RN102438181; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §335.2(b) and §335.4(3), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; PENALTY: \$12,092; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(20) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2021-0399-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 56431, Special Conditions Number 1, Federal Operating Permit Number O612, General Terms and Conditions and Special Terms and Conditions Number 7, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202202797

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 26, 2022



Enforcement Orders

An agreed order was adopted regarding Klaas Talsma, Anastasia Talsma, and TWO SISTERS DAIRY, LLC, Docket No. 2021-0296-AGR-E on July 26, 2022 assessing \$3,438 in administrative penalties with \$687 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 INEOS Styrolution America LLC, Docket No. 2021-0343-AIR-E on July 26, 2022 assessing \$4,688 in administrative penalties with \$937 deferred. Information concerning any aspect of this order may be obtained by contacting Kate Dacy, 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 Arkema Inc., Docket No. 2021-0348-AIR-E on July 26, 2022 assessing \$6,450 in administrative penalties with \$1,290 deferred. Information concerning any aspect of

this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Newcastle, Docket No. 2021-0522-MLM-E on July 26, 2022 assessing \$1,700 in administrative penalties with \$340 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOLAR TURBINES INCORPORATED, Docket No. 2021-0736-AIR-E on July 26, 2022 assessing \$3,250 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2021-0771-PWS-E on July 26, 2022 assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW MUBIN, LLC dba Star Stop 6, Docket No. 2021-0829-PST-E on July 26, 2022 assessing \$4,500 in administrative penalties with \$900 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 BRP PROPERTIES LLC, Docket No. 2021-0848-PWS-E on July 26, 2022 assessing \$930 in administrative penalties with \$186 deferred. Information concerning any aspect of this order may be obtained by contacting America Ruiz, 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 Rock Crushers, Inc., Docket No. 2021-0869-WQ-E on July 26, 2022 assessing \$5,000 in administrative penalties with \$1,000 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 Town of Ponder, Docket No. 2021-0921-MWD-E on July 26, 2022 assessing \$6,375 in administrative penalties with \$1,275 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RGI MATERIALS, INC., Docket No. 2021-0960-WQ-E on July 26, 2022 assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Harris County Municipal Utility District 304, Docket No. 2021-1025-PWS-E on July 26, 2022 assessing \$5,775 in administrative penalties with \$1,155 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Galena Park Independent School District, Docket No. 2021-1061-PWS-E on July 26, 2022 assessing \$1,787 in administrative penalties with \$357 deferred. Information concerning any aspect of this order may be obtained by contacting America Ruiz, 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 HEAVENS MOBILE HOME PARK, LLC, Docket No. 2021-1075-PWS-E on July 26, 2022 assessing \$200 in administrative penalties with \$40 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WHITEOAK SHORES SEWER SERVICE CORPORATION, Docket No. 2021-1131-MWD-E on July 26, 2022 assessing \$4,687 in administrative penalties with \$937 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Linden, Docket No. 2021-1280-PWS-E on July 26, 2022 assessing \$3,417 in administrative penalties with \$683 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OCCIDENTAL PERMIAN LTD., Docket No. 2021-1333-AIR-E on July 26, 2022 assessing \$5,813 in administrative penalties with \$1,162 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 EPIC Y-Grade Logistics, LP, Docket No. 2021-1415-AIR-E on July 26, 2022 assessing \$3,638 in administrative penalties with \$727 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 Jane Borel dba Janes Shady Acres RV Park, Docket No. 2021-1416-PWS-E on July 26, 2022 assessing \$2,000 in administrative penalties with \$400 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Peter Thiessen dba Cotton Land RV Park, Docket No. 2021-1636-PWS-E on July 26, 2022 assessing \$563 in administrative penalties with \$112 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Diamond H Services, Inc., Docket No. 2022-0105-WQ-E on July 26, 2022 assessing \$350 in administrative penalties. Information concerning any aspect of this citation 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 field citation was adopted regarding Luis A. Duran, Docket No. 2022-0138-OSI-E on July 26, 2022 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding AT&T Corp, Docket No. 2022-0167-PST-E on July 26, 2022 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202202829

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 27, 2022



Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal and Notice of Pretreatment Program Substantial Modification

Notice Issued July 27, 2022

APPLICATION NO. WQ0010086002; Fort Bend County WCID No. 2, 2331 South Main Street, Stafford, Texas 77477, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010086002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. TCEQ received this application on January 31, 2022. The facility is located approximately 3,300 feet southeast of the intersection of Craven Road and U.S. Highway 90, in Fort Bend County, Texas 77489. The treated effluent is discharged to Cangelosi Ditch, thence to Sims Bayou, thence to Houston Ship Channel/Buffalo Bayou Tidal in Segment No. 1007 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for Cangelosi Ditch and limited aquatic life use for Sims Bayou. The designated uses for Segment No. 1007 are navigation and industrial water supply. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-95.521388%2C29.615277&level=12>

The applicant has also applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. Approval of the request for modification to the pretreatment program will allow the applicant to revise the Fort Bend County WCID No. 2's technically based local limits, and ordinance which incorporates such revisions. The request for approval complies with both federal and State requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication. The TCEQ Executive Director has completed the technical review of the application, pretreatment program substantial modification, and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The Executive Director has also made a preliminary decision

that the requested substantial modification to the approved pretreatment program, if approved, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, pretreatment program substantial modification, and draft permit are available for viewing and copying at Sugar Land Branch Library, 550 Eldridge Road, Sugar Land, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application or on the application for substantial modification of the pretreatment program. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application or the application for substantial modification of the pretreatment program. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application, or the application for substantial modification of the pretreatment program, or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application.

If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. There is no opportunity to request a contested case hearing on the application for substantial modification of the pretreatment program. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "I/we request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hear-

ing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application, the application for substantial modification of the pretreatment program, or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Fort Bend County WCID No. 2 at the address stated above or by calling Mr. Jonathan Nguyen, Quiddity Engineering, at (512) 685-5156.

TRD-202202828
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2022



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 169595

APPLICATION. Finley Redimix, LLC, 2530 Eldorado Parkway Suite 205E-F, McKinney, Texas 75070-4398 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 169595 to authorize the operation of two concrete batch plants. The facility is proposed to be located south of County Road 1220 approximately 0.45 mile east of Texas 121, Melissa, Collin County, Texas 75454. 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=33.305577&lng=-96.512346&zoom=13&type=r>. This application was submitted to the TCEQ on July 7, 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 July 12, 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.**

The Public Hearing is to be held:

Tuesday, September 6, 2022, at 6:00 p.m.

Hurricane Creek Country Club

1800 Fairway Lane

Anna, Texas 75409

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 Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr., Fort Worth, Texas 76118-6951, 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 Finley Redimix, LLC, 2530 Eldorado Parkway Suite 205E-F, McKinney, Texas 75070-4398, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: July 22, 2022

TRD-202202822

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 27, 2022



Notice of District Petition

Notice issued July 21, 2022

TCEQ Internal Control No. D-06092022-025; TPHTM 1464, LLC, a Delaware limited liability company, Ben Bono 2006 Descendants Trust, Sarah Langston Trust, Joseph A. Bono, III Trust, and Briana L. Bono, III Trust (Petitioners) filed a petition for creation of Fort Bend County Municipal Utility District No. 255 (District) 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 Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, U.S. Bank National Association dba Housing Capital Company, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 440.49 acres located within Fort Bend County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2022-376, passed and approved on May 18, 2022, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, enterprises, road facilities, and park and recreational facilities 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 \$106,022,200 (\$70,472,500 for water, wastewater, and drainage plus \$13,149,500 for roads plus \$22,400,200 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-202202760

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 21, 2022



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 6, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 6, 2022**. Comments may also be sent by facsimile machine to the attorney

at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: FRONTERA EXPRESS LIMITED LIABILITY COMPANY; DOCKET NUMBER: 2020-0381-MSW-E; TCEQ ID NUMBER: RN110753977; LOCATION: 7999 East United States Highway 277 near Eagle Pass, Maverick County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §328.56(c) and §328.58(a), by failing to use a manifest to document the removal and management of all scrap tires generated on-site; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and to utilize appropriate vector control measures at least once every two weeks; 30 TAC §330.15(a), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; 40 Code of Federal Regulations (CFR) §279.22(d)(3), Texas Health and Safety Code, §371.041, and 30 TAC §324.15, by failing to clean up and properly manage the release of used oil to the environment; 40 CFR §279.22(c)(1) and 30 TAC §324.6, by failing to label or clearly mark used oil storage containers with the words "Used Oil"; and 40 CFR §279.22(b)(1) and (2), and 30 TAC §324.6, by failing to store used oil in containers that are in good condition; PENALTY: \$6,601; STAFF ATTORNEY: John S. Mercurief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202202800

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 26, 2022



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 6, 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 each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO

should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 6, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Jimmy Ray Bland; DOCKET NUMBER: 2020-0551-WQ-E; TCEQ ID NUMBER: RN111005716; LOCATION: on Collins Road, one third of a mile north of Fishtrap Road, Denton County; TYPE OF FACILITY: auto crushing and salvaging facility; RULES VIOLATED: 40 Code of Federal Regulations §122.26(c), TWC, §26.121, and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with industrial activities; and TWC, §5.702 and §26.0291, by failing to pay outstanding stormwater permit fees and associated late fees; PENALTY: \$2,500; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Paveloc Industries LLC; DOCKET NUMBER: 2018-0387-AIR-E; TCEQ ID NUMBER: RN105936660; LOCATION: 1750 Cottonwood School Road, Rosenberg, Fort Bend County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: \$10,000; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Ted Gillis; DOCKET NUMBER: 2018-0401-AIR-E; TCEQ ID NUMBER: RN105936660; LOCATION: 1705 Cottonwood School Road, Rosenberg, Fort Bend County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and (b) and 30 TAC §101.4, by causing, suffering, allowing, or permitting nuisance dust conditions; THSC, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; and THSC, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$55,559; STAFF ATTORNEY: Benjamin Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202202801

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 26, 2022



Notice of Public Meeting for TPDES Permit for Municipal Wastewater Amendment: Permit No. WQ0015635001

APPLICATION. Plum Creek Utility Company LLC, P.O. Box 701201, San Antonio, Texas 78270, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015635001, to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 240,000

gallons per day (gpd) to a daily average flow not to exceed 750,000 gpd.

The facility is located at 176 Grist Mill Road, in the City of Uhland, Hays County, Texas 78640. The treated effluent is discharged directly to Plum Creek in Segment No. 1810 of the Guadalupe River Basin. The designated uses for Segment No. 1810 are primary contact recreation, aquifer protection, and high aquatic life use. The aquifer protection use applies to the contributing, recharge, and transition zones of the Edwards Aquifer which are all upstream of this proposed facility and outfall; therefore, the aquifer protection use does not apply to this section of Segment No. 1810. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Plum Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.80999%2C29.960767&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 8, 2022, at 7:00 p.m.

Uhland Elementary School (Cafeteria)

2331 High Road

Uhland, Texas 78640

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Kyle Public Library, 550 Scott Street, Kyle, Texas. Further information may also be obtained from Plum Creek Utility Company LLC at the address stated above or by calling Ms. Mia Natalino, P.E., at (210) 209-8029.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: July 27, 2022

TRD-202202815

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 27, 2022



Notice of Public Meeting on Air Quality Standard Permit for Concrete Batch Plants: Proposed Registration No. 169057
Aviso de Reunión Pública Permiso Estándar de Calidad del Aire para Plantas Mezcladoras de Concreto: Propuesto Registro N.º 169057

Application. R Construction Company, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 169057, which would authorize construction of a permanent concrete batch plant located at the following driving directions: from the intersection of Cowhide Drive and Farm-to-Market Road 1093, go west on Farm-to-Market Road 1093 for 0.15 mile, site entrance on the right, Simonton, Fort Bend County, Texas 77476. 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. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps>.

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=29.679166&lng=-96.007222&zoom=13&type=r>. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 TAC §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

Public Comment/Public Meeting. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, August 25, 2022 at 6:00 p.m.

Fulshear High School (Theater)

9302 Charger Way Fulshear, Texas 77441

Information. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www.tceq.texas.gov/goto/comment>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Bob Lutts Fulshear/Simonton Branch Library, 8100 Farm-to-Market Road 359 South, Fulshear, Fort Bend County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. Visit www.tceq.texas.gov/goto/cbp to review the standard permit. Further information may also be obtained from R Construction Company, P.O. Box 189, Buffalo, Texas 75831-0189 or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC at (469) 946-8195.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: July 26, 2022

Solicitud. R Construction Company, ha solicitado a la Comisión de Calidad Ambiental de Texas (TCEQ, por sus siglas en inglés) un Permiso Estándar de Calidad del Aire, Registro N.º 169057, que autorizaría la construcción de una planta mezcladora de concreto permanente ubicada en las siguientes direcciones de manejo: desde la intersección de Cowhide Drive y Farm-to-Market Road 1093, vaya hacia

el oeste en Farm-to-Market Road 1093 durante 0.15 millas, entrada al sitio a la derecha, Simonton, Condado de Fort Bend, Texas 77476. Esta solicitud se está procesando de manera expedita, según lo permitido por las reglas de la comisión en el Código Administrativo 30 de Texas, Capítulo 101, Subcapítulo J. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps>.

Este enlace a un mapa electrónico de la ubicación general del sitio o instalación se proporciona como cortesía pública y no como parte de la solicitud o aviso. Para conocer la ubicación exacta, consulte la solicitud. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.679166&lng=-96.007222&zoom=13&type=r>. La instalación propuesta emitirá los siguientes contaminantes del aire: material particulado que incluye (pero no se limita a) agregado, cemento, polvo de carretera y material particulado con diámetros de 10 micras o menos y 2.5 micras o menos.

El director ejecutivo ha completado las revisiones administrativas y técnicas de la solicitud y ha determinado que la solicitud cumple con todos los requisitos de un permiso estándar autorizado por 30 TAC §116.611, que establecería las condiciones bajo las cuales la planta debe operar. El director ejecutivo ha tomado la decisión preliminar de emitir el registro porque cumple con todas las normas aplicables.

Comentario Público/Reunión Pública. Puede enviar comentarios públicos a la Oficina del Secretario Oficial en la dirección a continuación. La TCEQ considerará todos los comentarios públicos al desarrollar una decisión final sobre la solicitud. Se convocará una reunión pública que constará de dos partes, un Periodo de Discusión Informal y un Periodo de Comentarios Formales. Una reunión pública no es una audiencia de caso impugnado en virtud de la Ley de Procedimiento Administrativo. Durante el Periodo de Discusión Informal, se alentará al público a hacer preguntas al solicitante y al personal de la TCEQ sobre la solicitud de permiso. Los comentarios y preguntas presentadas oralmente durante el Periodo de Discusión Informal no se considerarán antes de que se tome una decisión sobre la solicitud de permiso, y no se dará una respuesta formal. Las respuestas se proporcionarán oralmente durante el Periodo de Discusión Informal. Durante el Periodo de Comentarios Formales sobre la solicitud de permiso, los miembros del público pueden declarar sus comentarios formales oralmente en el registro oficial. Al final del periodo de comentarios, todos los comentarios formales se considerarán antes de que se tome una decisión sobre la solicitud de permiso. El director ejecutivo preparará una respuesta por escrito a todos los comentarios formales y se enviará a cada persona que presente un comentario formal o que solicite estar en la lista de correo para esta solicitud de permiso y proporcione una dirección postal. Solo se pueden considerar las cuestiones relevantes y materiales planteadas durante el Periodo de Comentarios Formales si se concede una audiencia de caso impugnado en esta solicitud de permiso.

La Reunión Pública se llevará a cabo:

jueves, 25 de agosto de 2022 a las 6:00 p.m.

Fulshear High School (Theater)

9302 Charger Way Fulshear, Texas 77441

Información. Se alienta a los miembros del público a enviar comentarios por escrito en cualquier momento durante la reunión pública o por correo antes del cierre del periodo de comentarios públicos a Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 o electrónicamente a <http://www.tceq.texas.gov/goto/comment>. Si necesita más información sobre la solicitud de permiso o el proceso de permisos, llame al Programa de Educación Pública de la TCEQ, sin cargo, al (800)

687-4040. Puede encontrar información general en nuestro sitio web en www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

La solicitud, la decisión preliminar del director ejecutivo y el permiso estándar estarán disponibles para su visualización y copia en la oficina central de la TCEQ, la oficina regional de la TCEQ Houston y Bob Lutts Fulshear/Simonton Branch Library, 8100 Farm-to-Market Road 359 South, Fulshear, Fort Bend County, Texas. El archivo de cumplimiento de la instalación, si existe alguno, está disponible para revisión pública en la Oficina Regional de la TCEQ Houston, 5425 Polk Street Suite H, Houston, Texas. Visite www.tceq.texas.gov/goto/cbp para revisar el permiso estándar. También se puede obtener más información de R Construction Company, P.O. Box 189, Buffalo, Texas 75831-0189 o llamando al Sr. Josh Butler, Consultor Principal, Elm Creek Environmental, LLC al (469) 946-8195.

Las personas con discapacidades que necesiten acomodaciones especiales en la reunión deben llamar a la Oficina del Secretario Oficial al (512) 239-3300 o (800) RELAY-TX (TDD) al menos cinco días hábiles antes de la reunión.

Fecha de Emisión del Aviso: 26 de julio del 2022

TRD-202202795

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 26, 2022



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit: Proposed Permit No. 2412

Application. Circle Lake Transfer, LLC, 13727 Office Park Drive, Houston, Texas 77070, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize the construction and operation of a Type V municipal solid waste transfer station. The facility is proposed to be located at 34910 Circle Lake Drive, Pinehurst, in Montgomery County, Texas 77362. The TCEQ received this application on April 4, 2022. The permit application is available for viewing and copying at the Malcolm Purvis Library, 510 Melton Street, Magnolia, in Montgomery County, Texas 77354, and may be viewed online at <http://www.circlelaketransfer.com>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/OX8znv0>. For exact location, refer to application.

Alternative Language Notice. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_posted_apps.html.

La notificación en otro idioma en español está disponible en https://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_posted_apps.html.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public

meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Circle Lake Transfer, LLC at the address stated above or by calling Mr. Shelby Lowe, President at (214) 605-2933.

TRD-202202731
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2022



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Limited Scope Amendment to Permit No. 2358

Application. Blossom Prairie Landfill, Inc., 3 Waterway Square Place, Ste. 110, The Woodlands, Texas 77380, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the acceptance of new waste streams not previously authorized. The limited scope amendment will incorporate a Special Waste Acceptance Plan allowing the facility to manage special waste without additional coordination with the TCEQ. The facility is located at 1096 County Road 15100, Blossom, Lamar County, Texas 75416. The TCEQ received this application on February 2, 2022. The permit application is available for viewing and copying at the Paris Public Library, 326 S. Main Street, Paris, in Lamar County, Texas 75460 and may be viewed online at <https://www.scsengineers.com/state/blossom-prairie-landfill>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1baraG>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material,

or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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. For more information about this permit application or the permitting process, please call the TCEQ's Public

Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Blossom Prairie Landfill, Inc. at the address stated above or by calling Mr. Brett DeVries, Ph.D., P.E., Project Manager at (817) 571-2288.

TRD-202202737

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2022



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 358C

Application. City of Arlington, 101 W. Abram Street, Mail Stop 01-0140, Arlington, Texas 76010, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the reconfiguration of the permitted waste disposal footprint at the existing City of Arlington Landfill. The resulting waste disposal capacity increase is approximately 15,910,900 cubic yards. The facility is located at 800 Mosier Valley Road, Arlington, in Tarrant County, Texas 76040. The TCEQ received this application on June 6, 2022. The permit application is available for viewing and copying at the Arlington Public Library - Northeast Branch, 1905 Brown Blvd., Arlington, in Tarrant County, Texas 76006, and may be viewed online at <http://www.ftwwearerboos.com>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1aCPjK>. For exact location, refer to application.

Alternative Language Notice. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. La notificación en otro idioma en español está disponible en www.tceq.texas.gov/goto/mswapps.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting

reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Arlington at the address stated above or by calling Mr. Adam Hart, Team Envi-

ronmental Manager, Republic Waste Services of Texas, Ltd., at (817) 317-2047.

TRD-202202736

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2022



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 1522B

Application. The City of Victoria, 700 Main Center, Suite 124, Victoria, Victoria County, Texas 77902, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the lateral and vertical expansion of the landfill, including the option for below-grade disposal of Class 1 Non-Hazardous Industrial Waste with the lateral expansion. This application will extend the life of the existing landfill. The facility is located at 18545 FM 1686, Victoria, Texas 77905 in Victoria County, Texas. The TCEQ received this application on April 6, 2022. The permit application is available for viewing and copying at the Victoria Public Library, 302 North Main Street, Victoria, Victoria County, Texas 77901 and may be viewed online at <https://info.burnsmcd.com/tceq-permits-city-of-victoria-landfill>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1uOq00>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; appli-

cant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Victoria at the address stated above or by calling Mr. Darryl Lesak, Director of Environmental Services at (361) 485-3381.

TRD-202202734

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2022



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 2256B

Application. SouthWaste Disposal, LLC, 525 S 6th Ave., in Tarrant County, Mansfield, Texas 76063, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize increasing the daily maximum limit of the waste accepted at the SouthWaste Disposal Dallas Facility, a Type V liquid waste processing facility. The facility is located at the address stated above in Tarrant County, Texas. The TCEQ received this application on May 9, 2022. The permit application is available for viewing and copying at the Mansfield Public Library, 104 S. Wisteria St., Mansfield, in Tarrant County, Texas 76063, and may be viewed online at <https://parkhill.com/tceq-permits/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/0XLi9f>. For exact location, refer to application.

Alternative Language Notice. Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. La notificación en otro idioma en español está disponible en www.tceq.texas.gov/goto/mswapps.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name

and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from SouthWaste Disposal, LLC at the address stated above or by calling Mr. Ben Camacho, Director of Compliance at (713) 413-9400.

TRD-202202733

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2022



Notice of Water Quality Application

The following notices were issued on July 21, 2022, thru July 25, 2022.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE NOTICE BEING PUBLISHED IN THE TEXAS REGISTER.

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0011139001, recently renewed on February 14, 2022, to correct typographical errors in the Measurement Frequency of Total Dissolved Solids to one/month. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 16372 U.S. Highway 59 North, in the City of Moscow, Polk County, Texas 75960

Deer Park Energy Center LLC and Calpine Operating Services Company, Inc., which operates Deer Park Energy Center, a combined cycle power generation facility, has applied for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004344000 to authorize composite sampling for total copper at Outfall 001. The amendment also grants the permittee authorization to retain the ability to collect grab samples of total copper if necessary. The draft permit authorizes the discharge of cooling tower blow-down and previously monitored effluent at a daily average flow not to exceed 1.48 million gallons per day (MGD) via Outfall 001, low-volume waste at an intermittent and flow variable rate via Outfall 101, and metal cleaning waste at an intermittent and flow-variable rate via Outfall 201. The facility is located at 5665 State Highway 225, in the City of Deer Park, Harris County, Texas 77536.

TRD-202202793
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 25, 2022



Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of June 2022, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AMARILLO	BSA HOSPITAL LLC DBA BAPTIST ST ANTHONYS HOSPITAL	L06573	AMARILLO	18	06/06/22
CUERO	DEWITT MEDICAL DISTRICT DBA CUERO REGIONAL HOSPITAL	L02448	CUERO	37	06/06/22
CYPRESS	HOUSTON INTERVENTIONAL CARDIOLOGY PA	L05470	CYPRESS	015	06/10/22
DALLAS	NORTH CENTRAL SURGICAL CENTER LLP	L07115	DALLAS	02	06/10/22
EL PASO	TEXAS ONCOLOGY PA	L05774	EL PASO	19	06/07/22
FORT WORTH	UPNT CANCER LLC DBA TEXAS CANCER SPECIALISTS	L07068	FORT WORTH	02	06/03/22
GEORGETOWN	RADIATION DETECTION COMPANY	L06647	GEORGETOWN	04	06/14/22
HOUSTON	GEOSCIENCE ENGINEERING & TESTING INC	L05180	CONROE	022	06/09/22
HOUSTON	CHOPRA IMAGING CENTER INC	L05566	HOUSTON	11	06/14/22
HOUSTON	TEXAS HEART MEDICAL GROUP	L05229	HOUSTON	018	06/10/22
HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH SYSTEM	L01303	HOUSTON	106	06/06/22
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	156	06/07/22

AMENDMENTS TO EXISTING LICENSES ISSUED: (Continued)

HUMBLE	RAJIV AGARWAL MD PA	L06991	HUMBLE	06	06/03/22
KINGWOOD	LIEBER-MOORE CARDIOLOGY ASSOCIATES DBA TEXAS CARDIOLOGY ASSOCIATES OF HOUSTON	L04622	KINGWOOD	24	06/10/22
MANSFIELD	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	21	06/06/22
PARIS	TEXAS ONCOLOGY PA	L04664	PARIS	35	06/08/22
PLANO	BAYLOR REGIONAL MEDICAL CENTER AT PLANO	L05844	PLANO	24	06/03/22
ROCKWALL	TEXAS HEALTH PHYSICIANS GROUP	L05412	ROCKWALL	16	06/06/22
SEMINOLE	FEHR'S METAL BUILDING CONSTRUCTION LLC	L06615	SEMINOLE	03	6/14/22
THE WOODLANDS	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST THE WOODLANDS HOSPITAL	L07044	THE WOODLANDS	02	06/10/22
THROUGHOUT TX	MLA LABS INC	L01820	AUSTIN	40	06/07/22
THROUGHOUT TX	NUMED INC	L02129	DENTON	83	06/08/22
THROUGHOUT TX	RINER ENGINEERING INC	L06872	HOUSTON	05	06/01/22
THROUGHOUT TX	IRISNDT INC	L06435	HOUSTON	31	06/13/22
THROUGHOUT TX	HALLIBURTON ENERGY SERVICES	L02113	HOUSTON	145	06/02/22
THROUGHOUT TX	LANGERMAN FOSTER ENGINEERING COMPANY LLC	L06382	WACO	09	06/14/22

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
RICHARDSON	METHODIST HOSPITALS OF DALLAS	L06474	RICHARDSON	12	06/07/22
SAN ANTONIO	HEART AND VASCULAR CLINIC OF SAN ANTONIO PLLC	L06485	SAN ANTONIO	03	06/07/22
THROUGHOUT TX	ELEMENT MATERIALS TECHNOLOGY HOUSTON LLC	L06451	HOUSTON	09	06/10/22
THROUGHOUT TX	IRISNDT INC	L06435	HOUSTON	30	06/03/22
THROUGHOUT TX	J Z RUSSELL INDUSTRIES INC	L06459	PORT ARTHUR	11	06/01/22
THROUGHOUT X	PSC INDUSTRIAL OUTSOURCING LP	L06155	DEER PARK	08	06/03/22

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BEAUMONT	LIND & ASSOCIATES INC	L04417	BEAUMONT	20	06/10/22
HOUSTON	SIGHTLINE WEST HOUSTON IMRT LLC	L06299	HOUSTON	13	06/14/22

IMPOUND ORDERS ISSUED:

Name	Type of Order	License Number	Address	Action	Date of Issuance
Texas Gamma Ray, LLC DBA TGR Industrial Services	Impound Order	L05561 (Site 005)	8777 Tallyho Road, Building 1 Houston, Texas	Impound industrial radiography devices	06/13/22
Texas Gamma Ray, LLC DBA TGR Industrial Services	Impound Order	L05561 (Site 006)	7080 Mayard Road Houston, Texas	Impound industrial radiography device	06/13/22

TRD-202202818
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: July 27, 2022

Order Adding Daridorexant to Schedule IV, Permanently Placing Five Synthetic Cannabinoids in Schedule I, and Temporarily Placing Seven Synthetic Benzimidazole-opioid Substances in Schedule I



The Drug Enforcement Administration (DEA) issued an interim final rule placing daridorexant in schedule IV of the Controlled Substances Act, including its salts, isomers of salts, and salts of isomers whenever the existence of such salts, isomers, and salts of such isomers is possible within the specific chemical designation. The interim final rule was published in the April 7, 2022 edition of the *Federal Register*, Volume 87, Number 67, pages 20313-20318 and was effective April 7, 2022. This action was taken based on the following:

- (1) Daridorexant has a low potential for abuse relative to the drugs or other substances in schedule III;
- (2) Daridorexant has a currently accepted medical use in treatment in the United States; and
- (3) Abuse of daridorexant may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

The DEA issued a final rule permanently placing the following substances in schedule I: ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-MDMB-PICA; 5F-MDMB-2201); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA, AKB48 *N*-(4-FLUOROBENZYL)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation. The final rule was published in the April 7, 2022 edition of the *Federal Register*, Volume 87, Number 67, pages 20318-20321 and was effective April 7, 2022. This action was taken based on the following:

- (1) 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and

FUB-144 have a high potential for abuse that is comparable to other schedule I substances such as JWH-018;

(2) 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 currently have no accepted medical use in treatment in the United States; and,

(3) There is a lack of accepted safety for use of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 under medical supervision.

The DEA issued a temporary amendment temporarily placing the following seven synthetic benzimidazole-opioid substances into schedule I: 2-(2-(4-butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (Other name: butonitazene); 2-(2-(4-ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (Other names: etodesnitazene; etazene); *N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: flunitazene); *N,N*-diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metodesnitazene); *N,N*-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metonitazene); 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (Other names: *N*-pyrrolidino etonitazene; etonitazepyne); and *N,N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: protonitazene) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation. The temporary amendment was published in the April 12, 2022 edition of the *Federal Register*, Volume 87, Number 70, pages 21556-21561. This action was taken based on the following:

1. Temporary placement of butonitazene, etodesnitazene, flunitazene, metodesnitazene, metonitazene, *N*-pyrrolidino etonitazene and protonitazene into schedule I is necessary to avoid an imminent hazard to public safety;

2. Butonitazene, etodesnitazene, flunitazene, metodesnitazene, metonitazene, *N*-pyrrolidino etonitazene and protonitazene have a high potential for abuse;

3. Butonitazene, etodesnitazene, flunitazene, metodesnitazene, metonitazene, *N*-pyrrolidino etonitazene and protonitazene have no currently accepted medical use in the United States; and,

4. There is a lack of accepted safety for use of butonitazene, etodesnitazene, flunitazene, metodesnitazene, metonitazene, *N*-pyrrolidino etonitazene and protonitazene under medical supervision.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that the substance daridorexant be added to schedule IV; the substances 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 be permanently placed into schedule I; and the substances butonitazene, etodesnitazene, flunitazene, metodesnitazene, metonitazene, *N*-pyrrolidino etonitazene, and protonitazene be temporarily placed into schedule I.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

- (1) α -Ethyltryptamine (Other names: etryptamine; Monase; α -ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; AET);
- (2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA);
- (3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α -desmethyl DOB);
- (4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA);
- (5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);

- (6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);
- (7) 4-Methoxyamphetamine (Other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA);
- (8) 5-Methoxy-3,4-methylenedioxyamphetamine (Other name: MMDA);
- (9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy- α -methyl-phenethylamine; "DOM"; "STP");
- (10) 3,4-Methylenedioxyamphetamine (Other names: MDA; Love Drug);
- (11) 3,4-Methylenedioxymethamphetamine (Other names: MDMA; MDM; Ecstasy; XTC);
- (12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);
- (13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other name: *N*-hydroxy MDA);
- (14) 3,4,5-Trimethoxyamphetamine (Other name: TMA);
- (15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);
- (16) α -Methyltryptamine (Other name: AMT), its isomers, salts, and salts of isomers;
- (17) Bufotenine (Other names: 3- β -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);
- (18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);
- (19) Dimethyltryptamine (Other name: DMT);
- (20) 5-Methoxy-*N,N*-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);
- (21) Ibogaine (Other names: 7-Ethyl-6,6- β -7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1',2':1,2] azepino [5,4-b] indole; *Tabernanthe iboga*);
- (22) Lysergic acid diethylamide;
- (23) Marihuana, the term marihuana does not include hemp, as defined in Title 5, Agriculture Code, Chapter 121;
- (24) Mescaline;
- (25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);
- (26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii* *Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;
- (27) *N*-ethyl-3-piperidyl benzilate;
- (28) *N*-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), except for tetrahydrocannabinols in hemp (as defined under Section 297A(1) of the Agricultural Marketing Act of 1946), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenylcyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);

(34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);

(36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);

(37) 3,4-Methylenedioxypropylvalerone (Other name: MDPV);

(38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);

(39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);

(40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);

(41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);

(42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);

(43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);

(44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name: 2C-H);

(45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);

- (46) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other name: 2C-P);
- (47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methydone);
- (48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole);
- (49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144; 5-F-UR-144, XLR11; (5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole);
- (50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA; AKB48);
- (51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);
- (52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);
- (53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);
- (54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);
- (55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);
- (56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);
- (57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);
- (58) Marijuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus *Cannabis*, other than separated resin (whether crude or purified) obtained from the plant;
- (59) 4-Methyl-*N*-ethylcathinone (Other name: 4-MEC);
- (60) 4-Methyl- α -pyrrolidinopropiophenone (Other name: 4-MePPP);
- (61) α -Pyrrolidinopentiophenone (Other name: [α]-PVP);
- (62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);
- (63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentedrone);
- (64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one

(Other names: pentylone; bk-MBDP);
(65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);
(66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);
(67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);
(68) α -Pyrrolidinobutiophenone (Other name: α -PBP);
(69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);
(70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);
(71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);
(72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (Other name: MPTP);
(73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA; ABD-CHMINACA);
(74) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA);
(75) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other name: 5F-AMB);
(76) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);
(77) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);
(78) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);
(79) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA);
(80) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA);
(81) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);
(82) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);
(83) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);
(84) Methyl 2-(1-(Cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);
(85) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);

(86) 1-(1,3-Benzodioxol-5-yl)-2-(ethylamino)pentan-1-one (Other names: *N*-ethylpentylone; ephylone);

(87) Methyl 2-(1-(4-fluorobutyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) (Other names: 4F-MDMB-BINACA; 4F-MDMB-BUTINACA);

(88) 1-(4-Methoxyphenyl)-*N*-methylpropan-2-amine (Other names: *p*-methoxymethamphetamine; PMMA);

*(89) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);

*(90) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-MDMB-PICA; 5F-MDMB-2201);

*(91) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-fluorobenzyl));

*(92) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25); and,

*(93) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144).

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's isomers, esters, ethers, salts and salts of isomers, esters, and ethers if the existence of the salts, esters, ethers isomers, and salts of isomers, esters, ethers is possible within the specific chemical designation:

(1) Fentanyl-related substances.

(1-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:

(1-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(1-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;

(1-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(1-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(1-1-5) Replacement of the *N*-propionyl group by another acyl group.

(1-2) This definition includes, but is not limited to, the following substances:

(1-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluorofentanyl);

(1-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: *o*-methyl acetylfentanyl);

(1-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β' -phenyl fentanyl; hydrocinnamoyl fentanyl); and,

(1-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl).

(2) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);

(3) α -pyrrolidinohexanophenone (Other names: α -PHP; α -pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);

(4) 4-Methyl- α -ethylaminopentiophenone (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);

(5) 4'-Methyl- α -pyrrolidinohexiophenone (Other names: MPHP; 4'-methyl- α -pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);

(6) α -pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one);

(7) 4'-Chloro- α -pyrrolidinovalerophenone (Other names: 4-chloro- α -PVP; 4'-chloro- α -pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one);

(8) 1-(1-(1-(4-Bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2*H*-benzo[d]imidazol-2-one (Other names: bromphine; 1-[1-[1-(4-bromophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2*H*-benzimidazol-2-one);

- * (9) 2-(2-(4-Butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (Other name: butonitazene);
- * (10) 2-(2-(4-Ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (Other names: etodesnitazene; etazene);
- * (11) *N,N*-Diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: flunitazene);
- * (12) *N,N*-Diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metodesnitazene);
- * (13) *N,N*-Diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: metonitazene);
- * (14) 2-(4-Ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (Other names: *N*-pyrrolidino etonitazene; etonitazepyne);
- and,
- * (15) *N,N*-Diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: protonitazene).

-Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances or any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Alfaxalone (5α-pregnan-3α-ol-11,20-dione);
- (2) Alprazolam;
- (3) Barbital;
- (4) Brexanolone (3α-hydroxy-5α-pregnan-20-one) (Other name: allopregnanolone);
- (5) Bromazepam;
- (6) Camazepam;
- (7) Chloral betaine;
- (8) Chloral hydrate;
- (9) Chlordiazepoxide;
- (10) Clobazam;
- (11) Clonazepam;

- (12) Clorazepate;
- (13) Clotiazepam;
- (14) Cloxazolam;
- *(15) Daridorexant;
- (16) Delorazepam;
- (17) Diazepam;
- (18) Dichloralphenazone;
- (19) Estazolam;
- (20) Ethchlorvynol;
- (21) Ethinamate;
- (22) Ethyl loflazepate;
- (23) Fludiazepam;
- (24) Flunitrazepam;
- (25) Flurazepam;
- (26) Fospropofol;
- (27) Halazepam;
- (28) Haloxazolam;
- (29) Ketazolam;
- (30) Lemborexant;
- (31) Loprazolam;
- (32) Lorazepam;
- (33) Lormetazepam;
- (34) Mebutamate;
- (35) Medazepam;
- (36) Meprobamate;
- (37) Methohexital;
- (38) Methylphenobarbital (mephobarbital);
- (39) Midazolam;
- (40) Nimetazepam;
- (41) Nitrazepam;
- (42) Nordiazepam;
- (43) Oxazepam;
- (44) Oxazolam;
- (45) Paraldehyde;
- (46) Petrichloral;
- (47) Phenobarbital;
- (48) Pinazepam;
- (49) Prazepam;

- (50) Quazepam;
- (51) Remimazolam;
- (52) Suvorexant;
- (53) Temazepam;
- (54) Tetrazepam;
- (55) Triazolam;
- (56) Zaleplon;
- (57) Zolpidem; and
- (58) Zopiclone.

TRD-202202816
 Cynthia Hernandez
 General Counsel
 Department of State Health Services
 Filed: July 27, 2022



Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for AmFirst Specialty Insurance Company, a foreign life, accident and/or health company. The home office is in Ridgeland, Mississippi.

Application to do business in the state of Texas for CM Indemnity Insurance Company, a foreign fire and/or casualty company. The home office is in Merrill, Washington.

Application for United Benefit Life Insurance Company, a foreign life, accident and/or health company, to change its name to Cigna Insurance Company. The home office is in Cleveland, Ohio.

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 FRD-CL, Austin, Texas 78701.

TRD-202202827
 Justin Beam
 Chief Clerk
 Texas Department of Insurance
 Filed: July 27, 2022



Texas Lottery Commission

Scratch Ticket Game Number 2439 "\$5,000 Cash Blowout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2439 is "\$5,000 CASH BLOWOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2439 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2439.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 2X SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 and \$5,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2439 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
2X SYMBOL	DBL
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$5,000	FVTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2439), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2439-0000001-001.

H. Pack - A Pack of the "\$5,000 CASH BLOWOUT" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$5,000 CASH BLOWOUT" Scratch Ticket Game No. 2439.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$5,000 CASH BLOWOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eleven (11) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eleven (11) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eleven (11) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eleven (11) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eleven (11) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 01 and \$1).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

F. KEY NUMBER MATCH: No matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

G. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$5,000 CASH BLOWOUT" Scratch Ticket Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$5,000 CASH BLOWOUT" Scratch Ticket Game prize of \$5,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$5,000 CASH BLOWOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$5,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$5,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 17,040,000 Scratch Tickets in Scratch Ticket Game No. 2439. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2439 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	1,704,000	10.00
\$2.00	1,136,000	15.00
\$5.00	284,000	60.00
\$10.00	227,200	75.00
\$20.00	56,800	300.00
\$50.00	17,040	1,000.00
\$100	4,970	3,428.57
\$5,000	20	852,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.97. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2439 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2439, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202202820
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 27, 2022



Scratch Ticket Game Number 2440 "\$200,000 Cash Blowout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2440 is "\$200,000 CASH BLOWOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2440 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2440.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,

23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 2X SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000 and \$200,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2440 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$200,000	200TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2440), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 075 within each Pack. The format will be: 2440-0000001-001.

H. Pack - A Pack of the "\$200,000 CASH BLOWOUT" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$200,000 CASH BLOWOUT" Scratch Ticket Game No. 2440.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$200,000 CASH BLOWOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$200,000 CASH BLOWOUT" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$200,000 CASH BLOWOUT" Scratch Ticket Game prize of \$1,000, \$5,000 or \$200,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$200,000 CASH BLOWOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$200,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$200,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2440. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2440 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	1,360,000	8.82
\$10.00	960,000	12.50
\$20.00	240,000	50.00
\$25.00	160,000	75.00
\$50.00	160,000	75.00
\$100	33,000	363.64
\$200	5,000	2,400.00
\$500	2,500	4,800.00
\$1,000	180	66,666.67
\$5,000	15	800,000.00
\$200,000	9	1,333,333.33

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.11. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2440 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2440, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202202823

Bob Biard

General Counsel

Texas Lottery Commission

Filed: July 27, 2022



Scratch Ticket Game Number 2441 "\$500,000 Cash Blowout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2441 is "\$500,000 CASH BLOWOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2441 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2441.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03,

04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$50,000 and \$500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2441 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWN
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

60	SXTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$50,000	50TH
\$500,000	500TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2441), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2441-0000001-001.

H. Pack - A Pack of the "\$500,000 CASH BLOWOUT" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$500,000 CASH BLOWOUT" Scratch Ticket Game No. 2441.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$500,000 CASH BLOWOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty (60) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty (60) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly sixty (60) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the sixty (60) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the sixty (60) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or

a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$500,000 CASH BLOWOUT" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$500,000 CASH BLOWOUT" Scratch Ticket Game prize of \$1,000, \$10,000, \$50,000 or \$500,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In

the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$500,000 CASH BLOWOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$500,000

CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$500,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 14,040,000 Scratch Tickets in Scratch Ticket Game No. 2441. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2441 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	1,684,800	8.33
\$20.00	842,400	16.67
\$30.00	561,600	25.00
\$50.00	421,200	33.33
\$100	140,400	100.00
\$200	31,590	444.44
\$500	4,680	3,000.00
\$1,000	702	20,000.00
\$10,000	8	1,755,000.00
\$50,000	4	3,510,000.00
\$500,000	6	2,340,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2441 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2441, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202202824

Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 27, 2022



Scratch Ticket Game Number 2442 "\$1,000,000 Cash Blowout"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2442 is "\$1,000,000 CASH BLOWOUT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2442 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2442.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60,

2X SYMBOL, 5X SYMBOL, 20X SYMBOL, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$2,000, \$20,000, \$100,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2442 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

60	SXTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
20X SYMBOL	WINX20
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$2,000	TOTH
\$20,000	20TH
\$100,000	100TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2442), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2442-0000001-001.

H. Pack - A Pack of the "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game No. 2442.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-four (64) Play Symbols. BONUS PLAY INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. \$1,000,000 CASH BLOWOUT PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-four (64) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-four (64) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the sixty-four (64) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the sixty-four (64) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or

a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. BONUS: A non-winning Prize Symbol in a BONUS play area will never match a winning Prize Symbol in the other BONUS play area.

D. BONUS: A Ticket will not have matching non-winning Prize Symbols across the two (2) BONUS play areas.

E. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 30 and \$30).

F. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

H. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

I. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

J. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

K. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

L. KEY NUMBER MATCH: The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game prize of \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game prize of \$2,000, \$20,000, \$100,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery,

payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$1,000,000 CASH BLOWOUT" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in Scratch Ticket Game No. 2442. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2442 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	1,008,000	10.00
\$30.00	806,400	12.50
\$50.00	604,800	16.67
\$100	403,200	25.00
\$200	100,800	100.00
\$500	19,152	526.32
\$2,000	840	12,000.00
\$20,000	20	504,000.00
\$100,000	5	2,016,000.00
\$1,000,000	4	2,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2442 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2442, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202202821
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 27, 2022



Scratch Ticket Game Number 2446 "Veterans Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2446 is "VETERANS CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2446 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2446.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, \$\$ SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2446 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
\$\$ SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2446), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2446-0000001-001.

H. Pack - A Pack of the "VETERANS CASH" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "VETERANS CASH" Scratch Ticket Game No. 2446.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "VETERANS CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "\$\$" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "\$\$" (DBL) Play Symbol will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "\$\$" (DBL) Play Symbol will only appear as dictated by the approved prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "VETERANS CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2446. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2446 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	624,000	9.62
\$4.00	480,000	12.50
\$5.00	96,000	62.50
\$10.00	72,000	83.33
\$20.00	48,000	125.00
\$50.00	40,000	150.00
\$100	2,725	2,201.83
\$1,000	50	120,000.00
\$30,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

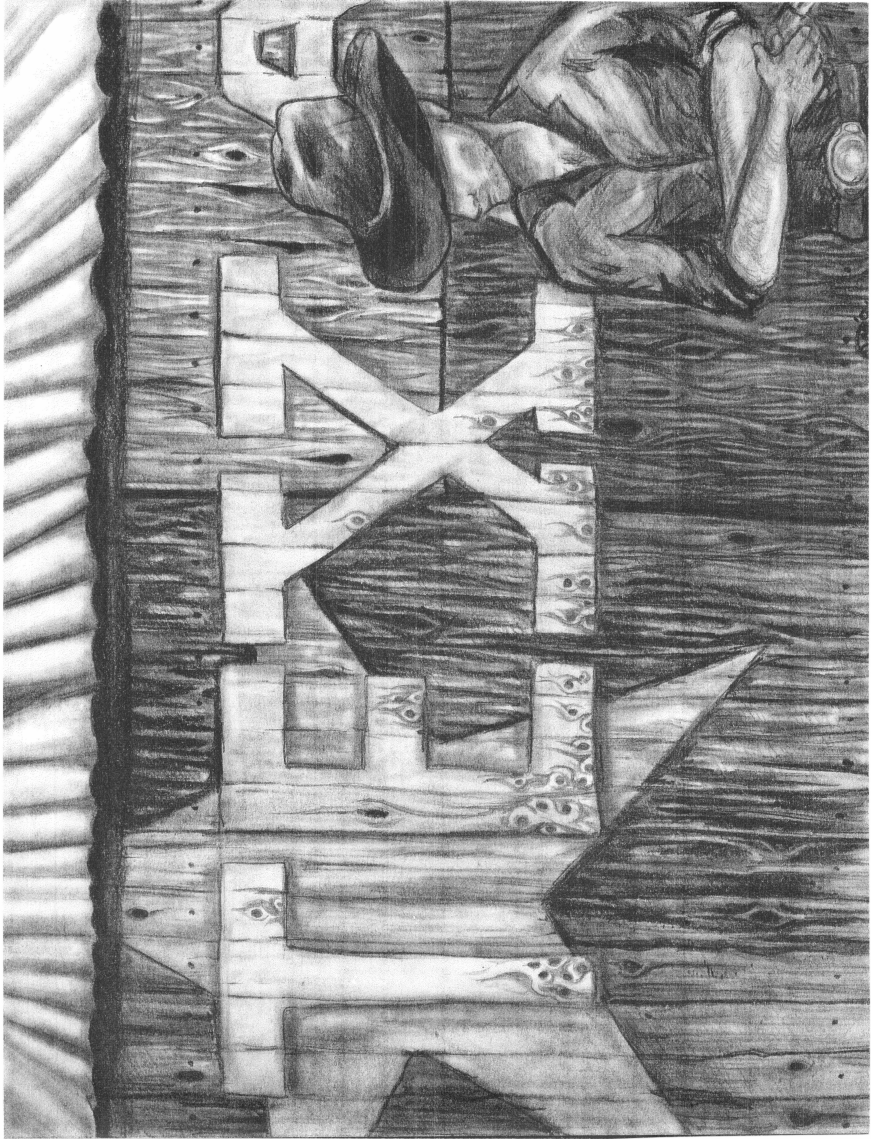
5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2446 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket

Game No. 2446, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202202825
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 27, 2022





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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