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THE GOVERNOR

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

Appointments

Appointments for July 25, 2022

Appointed as Judge of the 47th Judicial District, Armstrong, Potter, and Randall Counties, for a term until December 31, 2022, or until her successor shall be duly elected and qualified, Delinda R. "Dee" Johnson of Amarillo, Texas (replacing Judge Daniel L. "Dan" Schaap of Canyon, who resigned).

Appointments for July 26, 2022

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2027, Kathy L. Sellers of Kosse, Texas (replacing Erin C. Cockerham-O'Donnell Rhoden of Vernon, who resigned).

Appointments for August 2, 2022

Appointed as the Student Regent for Stephen F. Austin State University Board of Regents for a term to expire May 31, 2023, Paige M. Vadnais of Forney, Texas (replacing Spencer B. Coffey of Nacogdoches whose term expired).

Greg Abbott, Governor

TRD-202202894



Proclamation 41-3920

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, those same conditions continue to exist in Uvalde County;

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 Uvalde County.

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

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

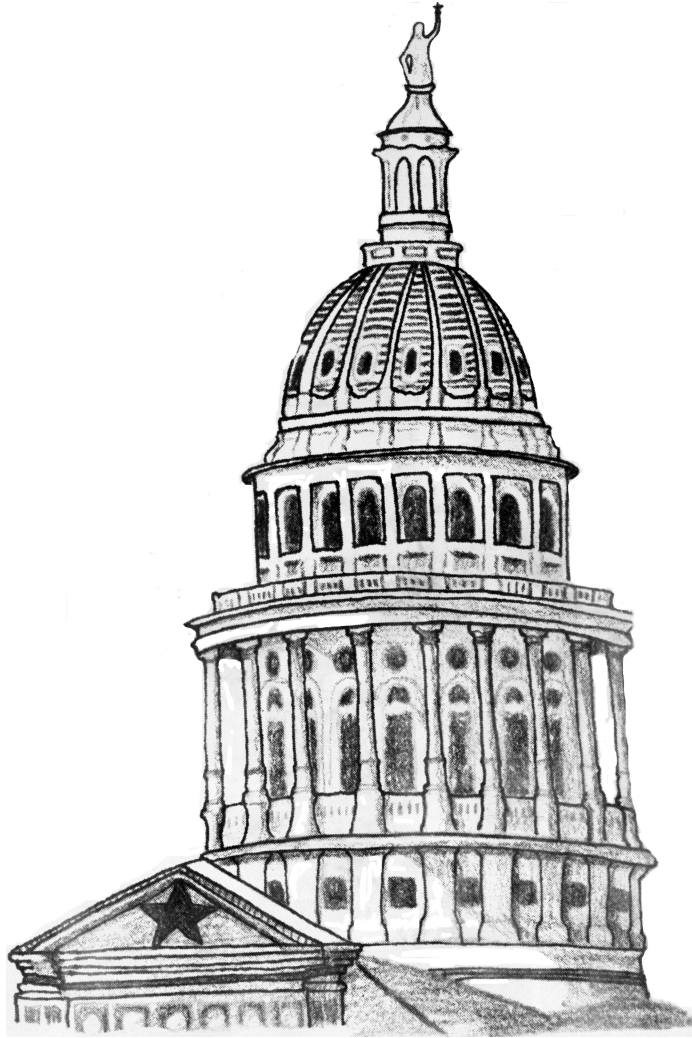
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of July, 2022.

Greg Abbott, Governor

TRD-202202843





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>.)

Request for Opinions

RQ-0470-KP

Requestor:

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Authority to determine software systems for county departments
(RQ-0470-KP)

Briefs requested by September 1, 2022

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

TRD-202202883

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: August 2, 2022





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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION

16 TAC §33.73

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes an amendment to rule §33.73, related to General Provisions for events at temporary locations.

Background and Summary

An amendment to §33.73(i) is necessary to remove references to statutes that have been repealed by the Texas Legislature.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the amended rule. The amended rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed amended rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed amended rule will not adversely affect a local economy in a material way. The amended rule will apply statewide and not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed amended rule. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed amended rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it

neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the amended rule would be in effect, the public would benefit from accurate references to the Alcoholic Beverage Code within the rule. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed amended rule. The analysis addresses the first five years the proposed amended rule would be in effect. The proposed amended rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amended rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed amended rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*. The commission does not anticipate the need to hold a public hearing on this proposed amendment.

The amended rule is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rule does not otherwise impact any other current rules or statutes.

§33.73. General Provisions.

(a) All wine sold or possessed with the intention to sell at an event held in an area where the sale of that type of alcohol has not been authorized by a local option election must comply with the terms of §16.011 of the Alcoholic Beverage Code.

(b) A copy of the File and Use Notification form that was filed with the commission, Nonprofit Entity Temporary Event Permit, or Temporary Event Approval and diagram must be displayed in a conspicuous place at the location of the event at all times during the event.

(c) The commission may deny authorization under this subchapter if:

(1) the information required to be submitted is incomplete or inaccurate;

(2) the person requesting the authorization does not qualify for the authorization;

(3) the event does not qualify for the authorization; or

(4) there is reason to believe that granting the authorization will:

(A) result in a violation of the Alcoholic Beverage Code or the rules of the commission; or

(B) be otherwise detrimental to the public.

(d) The grounds for denying a Nonprofit Entity Temporary Event Permit or Temporary Event Approval shall be communicated in writing to the applicant as soon as is reasonably practical.

(e) If an authorization under this subchapter is granted in error, the commission may rescind the authorization at any time.

(f) No person authorized under this subchapter shall use that authority to provide alcoholic beverages at any licensed premises during any time that a permit or license for that location is suspended.

(g) A Temporary Event Approval or Nonprofit Entity Temporary Event Permit may be used to provide alcoholic beverages for on-premises consumption at a location that has been designated as the licensed premises in a pending application only if:

(1) the commission has received an application for the proposed location and payment of all state fees and securities, if applicable, have been submitted;

(2) there is no pending protest of the application;

(3) the commission has performed an initial review for qualification; and

(4) there is no notice sign (60-day sign) pursuant to Alcoholic Beverage Code §§11.391 or 61.381 posted at the event location.

(h) The completion of a responsibilities course provided by the commission may be required before a Temporary Event Approval request is granted.

(i) The signage requirements for a Temporary Event Approval are the same as those for a primary license or permit and may include signs required by §§5.53, [11.041], 11.042, [61.11] and 61.111 of the Alcoholic Beverage Code and §31.4 of this title.

(j) All alcoholic beverages being transported shall be accompanied by invoices.

(k) The holder of a primary license or permit may return remaining alcoholic beverage products to the primary licensed location. The holder of an event authorized under this subchapter may distribute remaining product as authorized under Alcoholic Beverage Code §109.54.

(l) An applicant is not entitled to a refund or proration of fees paid for authorization under this subchapter, including any late filing fees.

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 27, 2022.

TRD-202202809

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 206-3451



16 TAC §33.78

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes an amendment to rule §33.78, related to the Nonprofit Events at a Temporary Location.

Background and Summary

The proposed amendment to §33.78 is necessary to add back in a provision that was inadvertently omitted during recent comprehensive revisions of rules for events at temporary locations. This amendment represents the long-standing practice of the agency and is not a policy change to those who stage such events. Placing it in this rule increases transparency into this long-standing practice.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. This amendment represents the long-standing practice of the agency using existing agency resources. The amended rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed amended rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed amended rule will not adversely affect a local economy in a material way. The amended rule will apply statewide and not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed amended rule. This amendment represents the long-standing practice of the agency and does not represent a policy change to businesses who stage such events. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed amended rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the amended rule would be in effect, the public would benefit increased transparency regarding the

agency's rules for non-profit auction events. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed amended rule. The analysis addresses the first five years the proposed amended rule would be in effect. This amendment represents the long-standing practice of the agency and will continue to be implemented using existing agency staff and other resources. The proposed amended rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amended rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed amended rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on August 22, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The amended rule is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rule does not otherwise impact any other current rules or statutes.

§33.78. Nonprofit Entity Temporary Events.

(a) A Nonprofit Entity Temporary Event Permit shall only be issued to a nonprofit entity as defined by Alcoholic Beverage Code §30.01.

(b) An application for a Nonprofit Entity Temporary Event Permit shall be made on forms provided by the commission and shall be signed and sworn to by the applicant.

(c) The requestor shall e-mail the completed Nonprofit Entity Temporary Event Permit application forms to the Events email address for the TABC Region in which the event will be held.

(d) The applicant shall remit payment of fees at the time the application is filed. The fee for a Nonprofit Entity Temporary Event Permit is \$50 per day.

(e) In addition to the application forms, other documents related to the event that may be required include a letter from the property owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization, and any other documents needed to determine qualification under the Alcoholic Beverage Code.

(f) If the event is approved, the commission shall issue to the applicant a Nonprofit Entity Temporary Event Permit showing on its face the effective dates of the permit.

(g) Permit holders may sell any alcoholic beverage authorized by law to be sold where the event is to be held.

(h) Permit holders must purchase distilled spirits for Nonprofit Entity Temporary Events from a local distributor permit holder.

(i) A nonprofit entity is not limited in the number of events it may hold under this section in a calendar year, except for certain events in dry areas as provided by Alcoholic Beverage Code §30.09.

(j) Events in dry counties must comply with Alcoholic Beverage Code §30.09.

(k) Auction-only Events.

(1) Subsections (d) - (h) of this section do not apply to a Nonprofit Temporary Event at which alcoholic beverages are auctioned but not otherwise sold or served to a consumer.

(2) Events under this subsection do not require prior approval and are not subject to late fees.

(3) The holder of a Nonprofit Entity Temporary Event Permit may conduct an auction on the licensed premises of another only if:

(A) all alcohol auctioned is stored separately from other alcohol stored, sold, or served by the permittee; and

(B) all alcohol auctioned, whether sold or unsold, is removed from the licensed premises immediately following the event.

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 27, 2022.

TRD-202202810

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 206-3451



16 TAC §33.81

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rule §33.81, related to Purchase of Alcoholic Beverages for a Temporary Event.

Background and Summary

After recent legislative changes to the commission's statutory menu of licenses and permits, members of the regulated industry expressed some confusion as to where a Mixed Beverage or Private Club permit holder can purchase wine and malt beverages for an event held at a temporary location that is not in the same county as the permit holder's primary licensed premises. Under Tex. Alco. Bev. Code §30.05, distilled spirits must be purchased from the holder of a local distributor's permit, but the Code and rules are silent on sourcing of wine and malt beverages for such events. The commission proposes new §33.81 to fill that gap by expanding the current standard for distilled spirits to include all alcoholic beverages.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, it is not expected to have a significant fiscal impact upon the

agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new rule. The proposed rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed rules will not adversely affect a local economy in a material way. The new rule applies statewide and does not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy because it allows purchase in the county of the event without respect to whether the county is urban or rural. Additionally, because few events will be subject to this rule, it will not result in economic impacts at the local or state level.

Small Business and Micro-Business Assessment/Flexibility Analysis

The proposed rule expands alcohol sourcing options for all businesses subject to the rule, including small and micro-businesses. This will be of particular benefit to those small and micro-businesses that do not have the vehicles or other resources necessary to transport alcoholic beverages over long distances. No material fiscal implications are anticipated for small or micro-businesses due to the proposed rule. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the new rule would be in effect, the public would benefit from access to a variety of products at events at temporary locations, including widely distributed products and those local to the area of the event. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on August 22, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The rule is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed new rule does not impact any other current rules or statutes.

§33.81. Purchase of Alcoholic Beverages for a Temporary Event.

(a) This section applies to holders of Mixed Beverage Permits or Private Club Registration Permits when selling alcoholic beverages at an event authorized by a Temporary Event Approval or under a File and Use Notification.

(b) Except as provided by subsection (c) of this rule, a Mixed Beverage Permit or a Private Club Registration Permit holder purchasing alcoholic beverages for an event at a temporary location in a county other than the county in which the premises covered by its primary permit is located must:

(1) purchase the alcoholic beverages from a distributor or wholesaler authorized under this code to sell the alcoholic beverages in the county in which the permit holder sells the alcoholic beverages under this section; and

(2) keep a record of the amount of alcoholic beverages purchased and sold under this section, by type, for no less than two years following the last day of the event.

(c) If the temporary event is held in a county that includes more than one territory, as that term is defined by Code §102.71(5), a Mixed Beverage Permit or a Private Club Registration Permit holder must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location.

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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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3451



SUBCHAPTER F. LICENSE AND PERMIT ACTION

16 TAC §33.94

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes amendments to rule §33.94, relating to Reporting License or Permit Changes.

Background and Summary

The proposed amendments result from review of chapter 41 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. During that review, agency staff noted that current commission rule §41.48, Changes in Control, had become largely obsolete due to revised reporting requirements under the agency's new online portal system. Also, rule §41.48 and rule §33.94 have significant areas of overlap, causing confusion as to which rule applies in each circumstance.

The commission proposes to repeal §41.48 in a separate, contemporaneous rulemaking. The proposed amendments to §33.94 would ensure that even without §41.48, the commission retains the ability to request any information it needs to determine whether a reportable change has occurred; update language to accommodate use of the agency's new online portal for reporting changes; and use the active voice in sections requiring license or permit holder compliance to support enforcement of them.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rule will be in effect, it is not expected to have a significant fiscal impact upon the agency because it reflects the current information collecting practices employed by existing commission staff. The resources necessary to provide for reporting changes through the agency's online portal system were previously appropriated to the commission by the Texas Legislature (H.B. 1545, 78th Tex. Leg., R.S. 2019). The amended rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed amended rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed amended rule will not adversely affect a local economy in a material way. The amended rule will apply statewide and not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed amended rule. The amendments, coupled with the proposed repeal of §41.48, actually decrease the level of information a license or permit applicant is required to provide to the agency up front, easing the burden of reporting requirements. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed amended rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the amended rule would be in effect, the public would benefit from regulated businesses' understanding of and compliance with commission reporting requirements, some of which are designed to ensure maintenance of legal relationships between members of industry. The public also benefits from the savings of TABC employee time and effort due to the streamlining of data reporting requirements and procedures, which are supported by this rule change. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed amended rule. The analysis addresses the first five years the proposed amended rule would be in effect. The proposed amended rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amended rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed amended rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on August 22, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The amended rule is proposed as part of the regular four-year review cycle prescribed by Government Code §2001.039 and pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rule does not otherwise impact any other current rules or statutes.

§33.94. Reporting Permit or License Changes.

(a) All changes subject to this section must be reported in the manner prescribed by the commission. [~~In order to process renewal applications efficiently and to assure that permittees and licensees are qualified throughout the term of their permits or licenses, the commission prescribes the following reporting timelines for changes to information that was provided in connection with an original application or for changes to the most recent information that has been reported to the commission. For the reasons recited above, the commission finds that the timelines are necessary to accomplish the purposes of the Alcoholic Beverage Code pursuant to Alcoholic Beverage Code §5.32.~~]

(b) Nothing in this section limits the commission's authority to request information from a license or permit holder at any time to determine if a change required to be reported has occurred.

(c) [(b)] The license or permit holder must report to the commission the following changes [~~Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to~~]

the commission, must be reported to the commission] within 30 days following the date the change occurred:

(1) the addition or removal of a person whose name was included on the original application or whose name would be required if a new [original] application for an original license or permit was being submitted[, regardless of the title, position or ownership held];

(2) a change to a person's criminal history that affects their qualifications to hold a license or permit [a change to the type of business];

[(3) a change to a phone number or email address;]

[(4) a change to a person's criminal history that affects their qualifications to hold a permit or license;]

(3) [(5)] a change of the owner of the premises, a sublessor, a management company, or a concession company, or to the terms of any agreements with any such persons; or

(4) [(6)] a change of organization as that term is defined in Business Organizations Code §1.002(62), other than a change of business entity described in Alcoholic Beverage Code §§11.12 or 61.14 [which is subject to the requirements of subsection (d) of this section].

(d) [(e)] The license or permit holder must report [Any of] the following [information described in this subsection that] changes from the information provided in the [original] application for an original license or permit[;] or [that was provided in] the most recent reported change to the commission[, must be reported to the commission] prior to the date the change will occur:

(1) a change in corporate control pursuant to Alcoholic Beverage Code §28.04; or

(2) a change of tradename.

(e) [(d)] The license or permit holder must report a [A] change of business entity described in Alcoholic Beverage Code §§11.12 or 61.14 no less than ten days before [must be reported not later than the 11th day preceding] the date the change will occur.

(f) [(e)] This section does not apply to:

(1) a change of mailing address or other contact information, which are [is] subject to the requirements of §33.93 of this title (relating to Notification Requirements); or

(2) a change in the licensed or permitted location pursuant to Alcoholic Beverage Code §§11.08 or 61.09, which is subject to the requirements of §33.3 of this title (relating to Process to Apply for License or Permit).

[(f) All changes subject to this section must be reported on forms prescribed by the commission.]

[(g) Nothing in this section limits the commission's authority to request information from a permittee or licensee at any time to determine if a change has occurred.]

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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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3451



CHAPTER 35. ENFORCEMENT

16 TAC §35.1

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rule §35.1, related to Reporting a Breach of the Peace.

Background and Summary

The new rule results from review of Chapters 35 and 36 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. Proposed §35.1 is based upon current §35.32 (proposed to be repealed in a separate, simultaneous rulemaking), which requires some license and permit holders to report certain breaches of the peace to the TABC.

The proposed new rule clarifies that the holder any of the following permits must report to the TABC certain breaches of the peace occurring on property under their direct or indirect control: package store, wine only package store, wine and malt beverage retailer's on- or off-premises, mixed beverage, private club registration, and retail dealer's on- or off-premises permits. It clarifies this existing requirement by adding references to the underlying statutory authority for each license or permit type affected and adding a reference to the definition of "premises" from §11.49 of the Code into the rule subsection containing the reporting requirement, in addition to its current location within the rule's applicable definitions section (current §35.32(g)(3)). Specifically identifying the license and permit holders subject to the requirement and elevating the visibility of the applicable definition of "premises" is intended to increase regulated business's compliance with the rule.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, is not expected to have a significant fiscal impact upon the agency. Implementation will be performed using existing agency resources. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed new rule. The proposed rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed rule will not adversely affect a local economy in a material way. The new rule applies statewide and does not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

Small Business and Micro-Business Assessment/Flexibility Analysis

A small or micro-business that is a license or permit holder can report a breach of the peace quickly and easily by in person, by e-mail, by phone, or online at no cost. No material fiscal implications are anticipated for small or micro-businesses due to the proposed rule. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the rule would be in effect, the public would benefit from the public safety benefits of increased compliance with reporting requirements related to breaches of the peace on premises under the control of certain permit holders. These reports will assist TABC agents in investigating those breaches of the peace and tracking their frequency of occurrence at different sites. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on August 22, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The rule is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code by which it may prescribe and publish rules necessary to carry out the provisions of the code and Government Code §2001.039, which requires review of each commission rule at least every four years.

Current §35.32 is proposed to be repealed simultaneously with the publication of this proposed new rule. The proposed new rule does not otherwise impact any other current rules or statutes.

§35.1. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §§11.61(b)(21), 22.12, 24.11, 25.04(b), 26.03(b), 28.11, 32.24, 61.71(a)(30), 69.13, and 71.09.

(b) Except as provided in this subsection, a licensee or permittee shall report to the commission a breach of the peace on a licensed premises as defined by §11.49 of the Code. The licensee or permittee shall make the report as soon as possible, but not later than five calendar days after the incident. If the incident is a shooting, stabbing or murder, or an incident involving serious bodily injury, the licensee or permittee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

- (1) in person at any commission office;
- (2) through the commission's website;
- (3) by e-mail to breachofpeace@tabc.texas.gov; or
- (4) through the commission's internet-based reporting system.

(d) The executive director or the executive director's designee may require, in writing, that a licensee or permittee make any reports required by this section in a specific manner as instructed, if the licensee or permittee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(30).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

- (1) the date and time of the report;
- (2) the date and time of the incident being reported;
- (3) the trade name of the licensed premises where the incident occurred;
- (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
- (5) the name of the person filing the report, that person's relationship to the holder of the license or permit, and contact information for that person;
- (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the license or permit to answer questions from the commission about the incident, that person's relationship to the license or permit holder, and contact information for that person;
- (7) a brief description of the incident;
- (8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and
- (9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises or premises under the control of a license or permit holder, or when a disturbance is created by a person on the licensed premises or on premises under the control of a license or permit holder and the incident involves:

- (1) shooting, stabbing or murdering a person;
- (2) causing bodily injury to another person;

(3) threatening another person with a weapon;

(4) discharging a firearm on the licensed premises; or

(5) destroying the licensee's or permittee's property, if the incident is reported by the licensee or permittee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a "disturbance," and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the licensee or permittee, or any person allowed by the licensee or permittee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance," and therefore is always a reportable breach of the peace;

(3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

(h) A license or permit holder may not be held administratively liable for failing to file a report or failing to file a timely report under this section if it can demonstrate that it had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

(i) A license or permit holder may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the alleged breach of the peace:

(1) did not occur on the license or permit holder's premises; and

(2) occurred at a time that the license or permit holder's licensed premises was closed to the public.

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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Shana Horton

Rules Attorney

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For further information, please call: (512) 206-3451



CHAPTER 41. AUDITING

SUBCHAPTER D. SALES OF ALCOHOLIC BEVERAGES NOT IN REGULAR COURSE OF BUSINESS

16 TAC §41.48

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of rule §41.48 as part of a consolidation of two of its rules.

Background and Summary of Basis for the Proposed Rule Repeal

The proposed repeal results from review of chapter 41 of the commission's rules pursuant to the regular four-year review cycle prescribed by Government Code §2001.039. During that review, agency staff noted that §41.48, Changes in Control, is largely obsolete due to revised reporting requirements under the agency's new online portal system. Also, §41.48 and §33.94 have significant areas of overlap, causing confusion as to which rule applies in each circumstance. The commission proposes to repeal §41.48 and revise §33.94 in a separate, simultaneous rulemaking to consolidate therein regulations assisting in its enforcement of the Alcoholic Beverage Code.

The repeal is proposed pursuant to the commission's general powers and duties under §5.31 of the Code and the required regular four-year review cycle prescribed by Government Code §2001.039.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed repeal will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeal. The proposed repeal will have no impact on agency resources and does not impact other units of state and local government.

Rural Communities Impact Assessment

The proposed repeal will not have any material adverse fiscal or regulatory impacts on rural communities. The repeal applies statewide and has the same effect in rural communities as in urban communities. Likewise, the proposed repeal will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

The repeal of §41.48 removes from the rules several reporting requirements that are more cumbersome than those required under current agency rule implementation. The proposed repeal of these requirements will not result in material fiscal implications for small or microbusinesses. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed repeal does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The repeal would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeal would be in effect, the public would benefit from the consolidation of rules related to required reporting of certain business information in a single rule, clarify-

ing and thus increasing compliance with the rule requirements. The repeal is part of this consolidation. Members of the regulated industry will also benefit from greater certainty with respect to their reporting compliance. The public also benefits from the savings of TABC employee time and effort due to the streamlining of data reporting requirements and procedures, which are supported by this rule change. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed repeal. The analysis addresses the first five years the proposed repeal would be in effect. The proposed repeal neither creates nor eliminates a government program. The proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeal requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeal is not expected to result in a significant change in fees paid to the agency. The proposed repeal is not anticipated to have any material impact on the state's overall economy.

The proposed repeal does not create any new regulations. The proposed repeal has no impact on existing regulation. The proposed repeal has no impact on the number of individuals subject to the rule's applicability.

Comments on the proposed repeal may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, attention: Shana Horton, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeals on August 22, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The repeal is proposed pursuant to the commission's general powers and duties under §5.31 of the Code and the required regular four-year review cycle prescribed by Government Code §2001.039.

The proposed repeal does not impact any other current rules or statutes.

§41.48. Changes Relating to Control.

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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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3451



CHAPTER 45. MARKETING PRACTICES SUBCHAPTER F. ADVERTISING AND PROMOTION

16 TAC §45.117

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes an amendment to rule §45.117, related to Gifts and Advertising Specialties.

Background and Summary

The amendment proposed would authorize holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits to furnish signs promoting their beverages to retailers without a specific dollar value limitation. This amendment would bring the rule relating to providing signs for liquor in line with the current rule for malt beverages (§45.113). Without the amendment, such signs are limited to a total value of \$125 per brand per year, a figure that is inadequate in the current economy.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amended rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the amended rule. The amended rule does not impact fees or fines that can be collected by another state or local government, nor does it impose additional regulatory obligations on other units of government.

Rural Communities Impact Assessment

The proposed amended rule will not have any material adverse fiscal or regulatory impacts on rural communities. Likewise, the proposed amended rule will not adversely affect a local economy in a material way. The amended rule will apply statewide and not impact rural communities in any manner different from urban ones or any local economy in a manner different from other local economies or the state's economy.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed amended rule. The rule is permissive and does not require additional expenditures by any regulated business. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed amended rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the amended rule would be in effect, the public would benefit from clarity and consistency in the commission's rules related to signage provided to retailers, regardless of the type of alcoholic beverages advertised, and from greater knowledge of the products available at a retail outlet. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed amended rule. The analysis addresses the first five years the proposed amended rule would be in effect. The proposed amended rule neither creates nor eliminates a government program. It does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amended rule requires neither an increase nor a decrease in future legislative appropriations to the commission.

Comments on the proposed amended rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on August 22, 2022, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The amended rule is proposed pursuant to the agency's authority under §5.31 of the Alcoholic Beverage Code, by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The proposed amended rule does not otherwise impact any other current rules or statutes.

§45.117. Gifts and Advertising Specialties.

(a) General.

(1) This section is enacted pursuant to Alcoholic Beverage Code §§102.07(b), 102.07(d), 108.042 and 109.58.

(2) This section applies to buyers, sellers, and consumers of liquor.

(b) Gifts to consumers. Holders of distiller's and rectifier's, winery, nonresident seller's, and wholesaler's permits may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in Alcoholic Beverage Code §102.07(d).

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promo-

tions authorized by this paragraph must be an employee or agent of a member of the manufacturing tier, a distributor, or a promotional permit holder.

(4) Holders of distiller's and rectifier's, winery, nonresident seller's, and wholesaler's permits may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$125 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Signs provided to retailers.

(1) Wholesalers may furnish, give or sell interior signs to retailers.

(2) A sign is a thing whose primary purpose is the advertisement of a brand or product or the price thereof.

(3) A sign furnished by a wholesaler may not bear the name, logo or trademark of a specific retailer.

(4) No wholesaler may paint, improve, or remodel a retailer's buildings or parts of buildings, inside or out, or finance any improvements thereto.

(e) ~~(f)~~ Service provided to retailer.

(1) Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may service and repair items furnished to retailers under the provisions of this rule.

(2) Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the permit holder's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's permit, or the permit holder's employee or agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(f) ~~(e)~~ Gifts to Unlicensed Organizations. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

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 27, 2022.

TRD-202202812

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 206-3451



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.18

The Texas Board of Veterinary Medical Examiners (Board) proposes new rule §571.18, concerning Licensed Veterinary Technician Designation.

The purpose of the proposed new rule is to clarify and protect the title Licensed Veterinary Technician to be used by those individuals who have attended a recognized program institution and have been licensed.

Fiscal Note

John Hargis, General Counsel, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Hargis has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice in the veterinary medicine profession.

Local Employment Impact Statement

Mr. Hargis has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Hargis has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Hargis has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to John Hargis, Texas Board of Veterinary Medical Examiners, 1801 Congress, Ste. 8.800, Austin, Texas 78701, or by e-mail to John.Hargis@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), (b), and (c), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public.

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

§571.18. Licensed Veterinary Technician Designation.

Pursuant to 801.002 and 801.265, only individuals who have received formal education at an accredited Veterinary Technician Institution and are licensed by the TBVME can hold the title of Licensed Veterinary Technician. All other employees of a veterinary medical establishment can hold the title of veterinary assistant.

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

Filed with the Office of the Secretary of State on August 1, 2022.

TRD-202202854

John Hargis

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 693-4500x3



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §573.27, concerning Honesty, Integrity, and Fair Dealing.

The purpose of the proposed amendment in part to increase standards of veterinary medical practice in Texas and to protect the public. The amendment also clarifies the times in which the veterinarian must obtain consent prior to performing an examination or procedure.

Fiscal Note

John Hargis, General Counsel, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

John Hargis has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

John Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice in the veterinary medicine profession.

Local Employment Impact Statement

John Hargis has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

John Hargis has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

John Hargis has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Valerie Mitchell, Texas Board of Veterinary Medical Examiners, 1801 Congress, Ste. 8.800, Austin, Texas 78701, by e-mail to John.Hargis@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), (b), and (c) Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public.

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

§573.27. Honesty, Integrity, and Fair Dealing.

Licenses shall conduct their practice with honesty, integrity, and fair dealing. Unless otherwise provided for in law, licensees shall obtain consent prior to performing an examination or procedure.

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

Filed with the Office of the Secretary of State on July 29, 2022.

TRD-202202850

John Hargis

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 693-4500x3



CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.29

The Texas Board of Veterinary Medical Examiners (Board) proposes this amendment to §575.29, concerning Informal Conference.

The purpose of the proposed amendment is to give veterinarians more clarification on what the Board expects from them going into informal conferences. The current rule is not specific enough.

Fiscal Note

John Hargis, General Counsel, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments as a result of enforcing or administering the rule.

Mr. Hargis has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Mr. Hargis has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice in the veterinary medicine profession.

Local Employment Impact Statement

Mr. Hargis has determined that the rule will have no impact on local employment or a local economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Mr. Hargis has determined that there are no anticipated adverse economic effects on small business, micro-businesses, or rural communities as a result of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Mr. Hargis has determined that there are no private real property interests affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Request for Public Comments

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to John Hargis, Texas Board of Veterinary Medical Examiners, 1801 Congress, Ste. 8.800, Austin, Texas 78701, by e-mail to John.Hargis@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

Statutory Authority

The rule is proposed under the authority of §801.151(a), (b), and (c) Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession, and that the Board may adopt rules to protect the public.

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

§575.29 *Informal Conferences.*

(a) Informal conferences requiring medical expertise, shall be conducted to provide the opportunity to both complainant and respondent to be heard by a panel of two veterinarians and one public member of the TBVME, and may be represented by counsel. Informal conferences that do not require medical expertise will be conducted by one veterinarian, the board's general counsel, and one member of the staff or public member designated by the executive director [Reasonable written notice of the time, date, and location of an informal conference shall be provided to the respondent and complainant, if applicable. The notice shall include a statement of the alleged violation(s) to be considered by the informal conference panel].

(1) No additional evidence may be submitted into the record after the initial review process has been completed by the initial medical reviewer.

(2) The complainant and respondent and any legal counsel, will receive information regarding potential outcomes of an informal conference prior to the informal conference.

(b) Reasonable written notice of the time, date and location of the informal conference shall be provided to the complainant and respondent if applicable. The notice shall include a statement of the alleged violation(s) to be considered by the IC panel. Deliberations of the informal conference panel are confidential. [The respondent and complainant shall each be provided with an opportunity to be heard by the informal conference panel, and may be represented by counsel. Deliberations by the informal conference panel are confidential.]

(c) The general counsel of the TBVME or a representative from [of] the attorney general's [general] office shall be present during the informal conference to advise the informal conference panel.

~~[(d) Informal conferences regarding complaints requiring medical expertise shall be conducted by an informal conference panel comprised of two veterinarian Board members and one public Board member.]~~

~~[(e) Informal conferences regarding complaints not requiring medical expertise may be conducted by an informal conference panel comprised of Board Staff. The Executive Director may designate the members of this panel.]~~

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 29, 2022.

TRD-202202852

John Hargis

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 693-4500x3

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 260. DEAF BLIND WITH MULTIPLE DISABILITIES (DBMD) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER I. INDIVIDUALIZED SKILLS AND SOCIALIZATION

26 TAC §§260.501, 260.503, 260.505, 260.507, 260.509, 260.511, 260.513, 260.515, 260.517

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §260.501, concerning Definitions; §260.503, concerning Description of Individualized Skills and Socialization; §260.505, concerning Provision of Individualized Skills and Socialization; §260.507, concerning Staffing Ratios; §260.509, concerning Discontinuation of Day Habilitation; §260.511, concerning Including Individualized Skills and Socialization on an IPC; §260.513, concerning Service Provider Qualifications; §260.515, concerning Contracting to Provide Individualized Skills and Socialization; and §260.517, concerning Program Provider Reimbursement for Individualized Skills and Socialization, in new Chapter 260, Subchapter I, Individualized Skills and Socialization.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations (CFR), §441.301(c)(4)(i) - (v), require home and community-based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated in and supporting full access of individuals to the greater community. The Centers for Medicare & Medicaid Services is requiring that states be in compliance with these regulations by March 17, 2023.

The 2020-21 General Appropriations Act (GAA), House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21) required HHSC to develop a plan to replace day habilitation in its Medicaid §1915(c) waiver programs for individuals with intellectual and developmental disabilities with more integrated services that maximize participation and integration of the individuals in the community.

In accordance with Rider 21, HHSC developed a plan to replace day habilitation provided in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf Blind with Multiple Disabilities (DBMD) Programs with individualized skills and socialization. The plan included proposed ratios for service providers of individualized skills and socialization to individuals receiving individualized skills and socialization to help ensure that individuals receiving the service have adequate support to achieve their goals.

The 2022-2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the HCS, TxHmL, and DBMD Programs.

The proposed rules implement the plan required by Rider 21 to replace day habilitation with individualized skills and socialization in the DBMD Program and will ensure that HHSC is in compliance with 42 CFR §441.301(c)(4)(i) - (v) by March 17, 2023.

The proposed rules describe the two types of individualized skills and socialization, on-site individualized skills and socialization and off-site individualized skills and socialization and require that both types be provided by an individualized skills and socialization provider.

The rules requiring a provider of individualized skills and socialization to be licensed in accordance with Texas Human Resources Code Chapter 103 are being proposed in 26 TAC Chap-

ter 559 and published elsewhere in this issue of the *Texas Register*. The rules will require an individualized skills and socialization provider to be licensed as a day activity and health services facility with a special designation for individualized skills and socialization.

The proposed rules describe the requirements for an individualized skills and socialization provider including a requirement that both on-site and off-site individualized skills and socialization be made available to individuals and that staffing ratios are met.

The proposed rules also discontinue day habilitation effective March 1, 2023.

The rules implementing individualized skills and socialization in the HCS and TxHmL Programs are being proposed in Texas Administrative Code (TAC) Title 26, Chapter 263, Subchapter L and in 26 TAC Chapter 262, Subchapter J, and published elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed new §260.501, Definitions, defines the terms used in the new subchapter including "individualized skills and socialization provider" which is defined as a legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

Proposed new §260.503, Description of Individualized Skills and Socialization, provides a description of on-site and off-site individualized skills and socialization, the two types of individualized skills and socialization. The proposed new rule requires individualized skills and socialization to be provided by an individualized skills and socialization provider and that such provider be the program provider or a contractor of the program provider. The proposed new rule also describes where on-site and off-site individualized skills and socialization are provided.

Proposed new §260.505, Provision of Individualized Skills and Socialization, describes requirements for providing individualized skills and socialization, including that an individualized skills and socialization provider make both on-site and off-site individualized skills and socialization available to an individual and that such provider allow an individual to receive off-site individualized skills and socialization without requiring the individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization. The proposed new rule also requires an individualized skills and socialization provider to document an individual's or legally authorized representative's decision for the individual not to participate in an activity the individual scheduled for on-site or off-site individualized skills and socialization.

Proposed new §260.507, Staffing Ratios, describes the required ratios for on-site and off-site individualized skills and socialization of service providers to individuals in the DBMD Program and other persons receiving individualized skills and socialization or a similar service. The ratios in the proposed new rule include other persons receiving individualized skills and socialization in the HCS Program and the TxHmL Program, and other persons receiving a similar service, to ensure that the ratios of service providers to individuals in the DBMD Program receiving on-site and off-site individualized skills and socialization are maintained. If a ratio described in this section includes individuals enrolled in other waiver programs receiving individualized skills and socialization or persons receiving a similar service, the proposed new rule requires that the ratio be the ratio required by §260.507(a). The proposed new rule requires a service provider of individualized skills and socialization assigned to the individuals and other

persons described in a ratio to provide services only to the individuals and other persons represented in the ratio.

Proposed new §260.509, Discontinuation of Day Habilitation, provides that day habilitation is not a service in the DBMD Program effective March 1, 2023 to ensure HHSC's compliance with 42 CFR §441.301(c)(4) before the deadline established by the Centers for Medicare & Medicaid Services.

Proposed new §260.511, Including Individualized Skills and Socialization on an IPC, requires a program provider to ensure a case manager includes individualized skills and socialization on an individual plan of care (IPC) in accordance with the rules governing the DBMD Program. The proposed new rule requires a case manager to ensure that an enrollment IPC or renewal IPC effective on or after March 1, 2023 does not include day habilitation and that a revised IPC with an effective date during the period of March 1, 2023 and February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023. The proposed new rule also requires that if an individual or the individual's LAR wants the individual to receive on-site or off-site individualized skills and socialization, but not both, the case manager documents the decision in the individual's individual program plan.

Proposed new §260.513, Service Provider Qualifications, describes the qualifications for a service provider of individualized skills and socialization.

Proposed new §260.515, Contracting to Provide Individualized Skills and Socialization, requires a program provider to ensure that an individualized skills and socialization provider with which it contracts complies with certain sections of the subchapter.

Proposed new §260.517, Program Provider Reimbursement for Individualized Skills and Socialization, provides that HHSC pays a program provider for on-site and off-site individualized skills and socialization in accordance with the reimbursement rate. The proposed new rule prohibits a program provider from submitting a claim for individualized skills and socialization provided during the time an individual's services are suspended or after services are terminated, except that the program provider may submit a claim for the first day of the individual's suspension or termination. The proposed new rule describes the circumstances under which HHSC does not pay or recoups payment from a program provider for individualized skills and socialization. The proposed new rule provides that HHSC does not pay or recoups payment from a program provider for day habilitation provided on or after March 1, 2023. The proposed new rule provides that HHSC conducts contracts and fiscal monitoring in accordance with rules governing the DBMD Program to determine whether a program provider is in compliance with the new subchapter.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that the cost to state government to adopt and implement the rules is \$13,300 General Revenue (GR) funds, \$119,700 Federal Funds (FF), and \$133,000 All Funds (AF) for the State Fiscal Year (SFY) 2023 and \$0 GR, \$0 FF, and \$0 AF for SFYs 2024 - 2027.

During the years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of 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 HHS system employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will 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 also determined that the rules could have an adverse economic effect on small businesses and micro-businesses due to the cost to comply. No rural communities contract with HHSC to provide services in the DBMD Program so they will not experience an adverse effect.

HHSC does not have the data to estimate the number of small businesses or micro-businesses subject to the rules; however, as of December 19, 2021, there are 25 DBMD program providers.

HHSC did not consider alternative methods to achieve the purpose of the proposed rules for small businesses or micro-businesses because implementing the new rules is necessary for the state's economic health, to comply with the federal regulations for home and community-based settings in 42 CFR §441.301(c)(4)(i) - (v).

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 receive a source of federal funds and comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, individuals in the DBMD Program will have the opportunity to receive individualized skills and socialization, a new service that provides increased community integration, additional opportunities and supports to be competitively employed, and choice of the settings in which individualized skills and socialization is provided.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because DBMD program providers will need to update their policies and provide staff training to implement the new rules. However, HHSC lacks sufficient data to determine an estimate of these costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held virtually on September 7, 2022 from 8:00 a.m. - 12:00 p.m. via GoToWebinar. Participants may register for the public hearing at: <https://register.gotowebinar.com/register/927810115195515152>.

Persons requiring further information, special assistance, or accommodations should contact Kayatta Thomas at (737) 256-8490.

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 22R036" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§260.501. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Abuse--
 - (A) physical abuse;
 - (B) sexual abuse; or
 - (C) verbal or emotional abuse.
- (2) Calendar day--Any day, including weekends and holidays.
- (3) Case manager--A service provider of case management.
- (4) CFC--Community First Choice. A state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subpart K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice).

(5) Community setting--A setting accessible to the general public within an individual's community.

(6) Day habilitation--A DBMD Program service.

(7) DBMD Program--The Deaf Blind with Multiple Disabilities Program.

(8) DFPS--Texas Department of Family and Protective Services.

(9) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(10) HHSC--The Texas Health and Human Services Commission.

(11) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form HHSC uses to determine the LOC for an individual.

(12) Individual--A person seeking to enroll or who is enrolled in the DBMD Program.

(13) Individualized skills and socialization--A DBMD Program service described in this subchapter. The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(14) Individualized skills and socialization provider--A legal entity licensed in accordance with Texas Human Resources Code, Chapter 103.

(15) IPC--Individual Plan of Care. A written plan developed by an individual's service planning team and documented on the HHSC Individual Plan of Care form. An IPC:

(A) documents:

(i) the type and amount of each DBMD Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(16) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of the enrollment IPC, as described in the rules governing the DBMD Program, through the last calendar day of the 11th month after the month in which enrollment occurred; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in the rules governing the DBMD Program.

(17) IPP--Individual Program Plan. A written plan developed in accordance with the rules governing the DBMD Program and documented on an HHSC Individual Program Plan form.

(18) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual 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.

(19) LOC--Level of care. A determination given to an individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(20) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(21) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(22) Program provider--A person that has a contract with HHSC to provide DBMD Program services, excluding a financial management services agency.

(23) Service provider--A person who directly provides a DBMD Program service or a CFC service to an individual.

(24) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(25) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(26) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

§260.503. Description of Individualized Skills and Socialization.

(a) The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(b) A program provider must ensure that individualized skills and socialization is provided by an individualized skills and socialization provider. An individualized skills and socialization provider must be the program provider or a contractor of the program provider.

(c) An individualized skills and socialization provider must ensure that individualized skills and socialization:

(1) provides person-centered activities related to:

(A) acquiring, retaining, or improving self-help skills and adaptive skills necessary to live successfully in the community and participate in home and community life; and

(B) gaining or maintaining independence, socialization, community participation, current or future volunteer goals, or employment goals consistent with achieving the outcomes identified in an individual's IPP;

(2) supports the individual's pursuit and achievement of employment through school, vocational rehabilitation, the DBMD Program service of employment assistance, or the DBMD Program service of supported employment;

(3) provides personal assistance for an individual who cannot manage personal care needs during an individualized skills and socialization activity;

(4) as determined by an assessment conducted by a registered nurse, provides assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(5) does not include activities in which an individual:

(A) produces marketable goods; and

(B) is paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act.

(d) An individualized skills and socialization provider must ensure that on-site individualized skills and socialization:

(1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider;

(2) includes transportation of an individual from one on-site individualized skills and socialization location to another on-site individualized skills and socialization location;

(3) promotes an individual's development of skills and behavior that support independence and personal choice; and

(4) is not provided in:

(A) a setting in which an individual must not reside, as set forth in the rules governing the DBMD Program, unless provided in an event open to the public; or

(B) the residence of an individual or another person.

(e) An individualized skills and socialization provider must ensure that off-site individualized skills and socialization:

(1) provides activities that:

(A) integrate an individual into the community; and

(B) promote the individual's development of skills and behavior that support independence and personal choice;

(2) is provided in a community setting chosen by the individual from among available community setting options;

(3) includes transportation of an individual from an on-site individualized skills and socialization location to an off-site individualized skills and socialization location and between off-site individualized skills and socialization locations; and

(4) is not provided in:

(A) a building in which on-site individualized skills and socialization is provided;

(B) a setting in which an individual must not reside, as set forth in the rules governing the DBMD Program, unless provided in an event open to the public; or

(C) the residence of an individual or another person.

§260.505. Provision of Individualized Skills and Socialization.

(a) An individualized skills and socialization provider must make both on-site individualized skills and socialization and off-site individualized skills and socialization available to an individual.

(b) An individualized skills and socialization provider must provide on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with an individual's IPC and IPP.

(c) An individualized skills and socialization provider must not require an individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization.

(d) If an individual does not want to participate in an activity the individual scheduled for on-site individualized skills and socialization or off-site individualized skills and socialization, or the LAR does not want the individual to participate in such activity, the individualized skills and socialization provider must document the decision not to participate in the individual's record.

§260.507. Staffing Ratios.

(a) The ratio of service providers of individualized skills and socialization to persons receiving services:

(1) on-site must be no higher than one service provider of individualized skills and socialization to three individuals and other persons receiving individualized skills and socialization or a similar service (1:3); and

(2) off-site must be no higher than one service provider of individualized skills and socialization to two individuals and other persons receiving individualized skills and socialization or a similar service (1:2).

(b) A ratio described in subsection (a) of this section may include persons enrolled in other waiver programs receiving individualized skills and socialization or persons receiving a similar service; however, the ratio must be the ratio required by subsection (a) of this section.

(c) A service provider of individualized skills and socialization assigned to the individuals represented in a ratio described in subsection (a) of this section must provide services only to the individuals and other persons represented in the ratio.

§260.509. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the DBMD Program, effective March 1, 2023, day habilitation is not a service in the DBMD Program.

§260.511. Including Individualized Skills and Socialization on an IPC.

A program provider must ensure that:

(1) a case manager includes individualized skills and socialization on an individual's enrollment IPC in accordance with the rules governing the DBMD Program;

(2) a case manager renews or revises an IPC to include individualized skills and socialization in accordance with the rules governing the DBMD Program;

(3) a case manager ensures that:

(A) an enrollment IPC or renewal IPC with an effective date on or after March 1, 2023 does not include day habilitation; and

(B) an IPC that is revised during the period of March 1, 2023 through February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023; and

(4) if an individual or the individual's LAR wants the individual to receive on-site or off-site individualized skills and socialization but not both, the case manager documents the decision in the individual's IPP.

§260.513. Service Provider Qualifications.

(a) An individualized skills and socialization provider must ensure that a service provider of individualized skills and socialization is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(b) An individualized skills and socialization provider must ensure that a service provider of individualized skills and socialization who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(c) An individualized skills and socialization provider must ensure that a service provider of individualized skills and socialization completes the following training in accordance with rules governing the DBMD Program:

(1) general orientation training;

(2) abuse, neglect, and exploitation training;

(3) cardiopulmonary resuscitation, first aid, and choking prevention training;

(4) DBMD Program Service Provider Training;

(5) training on needs of an individual to whom the service provider is providing individualized skills and socialization; and

(6) training on delegated tasks, if the service provider is performing delegated tasks for an individual receiving individualized skills and socialization.

§260.515. Contracting to Provide Individualized Skills and Socialization.

If a program provider contracts with an individualized skills and socialization provider to provide individualized skills and socialization to an individual, the program provider must:

(1) comply with 40 TAC §49.308 (relating to Subcontractors); and

(2) ensure the individualized skills and socialization provider complies with:

(A) §260.503(c) - (e) of this subchapter (relating to Description of Individualized Skills and Socialization);

(B) §260.505 of this subchapter (relating to Provision of Individualized Skills and Socialization): and

(C) §260.513 of this subchapter (relating to Service Provider Qualifications).

§260.517. Program Provider Reimbursement for Individualized Skills and Socialization.

(a) HHSC pays a program provider for on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with the reimbursement rates.

(b) If an individual's DBMD Program services and CFC services are suspended or terminated, a program provider must not submit a claim for on-site individualized skills and socialization or off-site individualized skills and socialization provided during the period of the individual's suspension or after the termination, except the program provider may submit a claim for the first calendar day of the individual's suspension or termination.

(c) A program provider must not bill for and HHSC does not pay a program provider for on-site individualized skills and socialization or off-site individualized skills and socialization, or recoups any payments made to the program provider for on-site individualized skills and socialization or off-site individualized skills and socialization:

(1) if individualized skills and socialization is not provided in accordance with this subchapter;

(2) if the individual receiving individualized skills and socialization is, at the time individualized skills and socialization was provided, ineligible for the DBMD Program;

(3) if individualized skills and socialization is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(4) if individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) if individualized skills and socialization is not provided in accordance with the individual's IPP;

(6) if the program provider does not comply with 40 TAC §49.305 (relating to Records);

(7) if the claim for the service does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment);

(8) if individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide individualized skills and socialization as described in §260.513 (relating to Service Provider Qualifications);

(9) if the program provider does not comply with the DBMD Program Manual;

(10) if HHSC determines that individualized skills and socialization would have been paid for by a source other than the DBMD

Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for individualized skills and socialization;

(11) if individualized skills and socialization was not provided; or

(12) if individualized skills and socialization is provided during a period of time that the individual produced marketable goods and was paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act.

(d) HHSC does not pay a program provider for day habilitation or recoups any payments made to the program provider for day habilitation provided on or after March 1, 2023, even if an individual's IPC includes day habilitation on or after March 1, 2023.

(e) HHSC conducts contract and fiscal monitoring in accordance with rules governing the DBMD Program to determine whether a program provider is in compliance with this subchapter.

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

Filed with the Office of the Secretary of State on July 28, 2022.

TRD-202202834

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 256-8490



CHAPTER 262. TEXAS HOME LIVING (TxHmL) PROGRAM AND COMMUNITY FIRST CHOICE (CFC)

SUBCHAPTER J. INDIVIDUALIZED SKILLS AND SOCIALIZATION

**26 TAC §§262.901, 262.903, 262.905, 262.907, 262.909,
262.911, 262.913, 262.915, 262.917, 262.919, 262.921,
262.923, 262.925, 262.927**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §262.901, concerning Definitions; §262.903, concerning Types of Individualized Skills and Socialization; §262.905, concerning Description of On-Site and Off-Site Individualized Skills and Socialization; §262.907, concerning Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization; §262.909, concerning Exceptions to Certain Requirements During Declaration of Disaster; §262.911, concerning Provision of On-Site and Off-Site Individualized Skills and Socialization; §262.913, concerning Provision of In-Home Individualized Skills and Socialization; §262.915, concerning Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; §262.917, concerning Staffing Ratios for Off-Site Individualized Skills and Socialization; §262.919, concerning Discontinuation of Day Habilitation; §262.921, concerning Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC; §262.923, concerning Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; §262.925, concerning

Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; and §262.927, concerning Enhanced Staffing Rate, in Texas Administrative Code (TAC), new Chapter 262, Subchapter J, Individualized Skills and Socialization.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations (CFR), §441.301(c)(4)(i) - (v), require home and community based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated in and supporting full access of individuals to the greater community. The Centers for Medicare and Medicaid Services is requiring that states be in compliance with these regulations by March 17, 2023.

The 2020-21 General Appropriations Act (GAA), House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21) required HHSC to develop a plan to replace day habilitation in its Medicaid §1915(c) waiver programs for individuals with intellectual and developmental disabilities with more integrated services that maximize participation and integration of the individuals in the community.

In accordance with Rider 21, HHSC developed a plan to replace day habilitation provided in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf Blind with Multiple Disabilities (DBMD) Programs with individualized skills and socialization. The plan included the use of staffing ratios while providing off-site individualized skills and socialization to individuals to ensure that the individuals receive more personalized attention and more easily meet their personal goals and to ensure the health and safety of the individuals.

The 2022-2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the HCS, TxHmL, and DBMD Programs.

The proposed rules implement the plan required by Rider 21 to replace day habilitation with individualized skills and socialization in the TxHmL Program and will ensure that HHSC is in compliance with 42 CFR §441.301(c)(4)(i) - (v) by March 17, 2023.

The proposed rules describe the three types of individualized skills and socialization, on-site individualized skills and socialization, off-site individualized skills and socialization, and in-home individualized skills and socialization. The proposed rules require that on-site and off-site individualized skills and socialization be provided by an individualized skills and socialization provider.

The rules requiring a provider of individualized skills and socialization to be licensed in accordance with Texas Human Resources Code Chapter 103 are being proposed in 26 TAC Chapter 559 and published elsewhere in this issue of the *Texas Register*. The rules will require an individualized skills and socialization provider to be licensed as a day activity and health services facility with a special designation for individualized skills and socialization.

The proposed rules include requirements for an individualized skills and socialization provider to make available both on-site and off-site individualized skills and socialization to individuals and meet staffing ratios based on levels of need for off-site individualized skills and socialization.

The proposed rules also include requirements for the provision of in-home individualized skills and socialization including criteria that must be met for an individual to receive the service and that the service must be provided in the residence of the individual receiving the service.

The proposed rules provide that HHSC may allow program providers to use one or more of the exceptions specified in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision is added to help ensure that providers are able to operate and provide services effectively during a disaster.

The proposed rules discontinue day habilitation which includes in-home day habilitation effective March 1, 2023.

The rules implementing individualized skills and socialization in the HCS and DBMD Programs are being proposed in 26 TAC Chapter 263, Subchapter L and in 26 TAC Chapter 260, Subchapter I, and published elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed new §262.901, Definitions, defines the terms used in the new subchapter including "individualized skills and socialization provider" which is defined as a legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

Proposed new §262.903, Types of Individualize Skills and Socialization, identifies the three types of individualized skills and socialization.

Proposed new §262.905, Description of On-Site and Off-Site Individualized Skills and Socialization, provides a general description of on-site and off-site individualized skills and socialization. The proposed new rule also describes where on-site and off-site individualized skills and socialization are provided.

Proposed new §262.907, Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization, provides a general description of in-home individualized skills and socialization. The proposed new rule also describes the criteria that must be met for an individual to receive in-home individualized skills and socialization.

Proposed new §262.909, Exceptions to Certain Requirements During Declaration of Disaster, provides that HHSC may allow program providers and service coordinators to use one or more of the exceptions described in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. The rule provides that HHSC notifies program providers and local intellectual and developmental disability authorities if it allows an exception to be used and defines "disaster area."

Proposed new §262.911, Provision of On-Site and Off-Site Individualized Skills and Socialization, describes requirements for providing on-site and off-site individualized skills and socialization, including that an individualized skills and socialization provider make both on-site and off-site individualized skills and socialization available to an individual and that such provider allow an individual to receive off-site individualized skills and socialization without requiring the individual to take a skills test or meet other requirements. The proposed new rule requires individualized skills and socialization to be provided by an individualized skills and socialization provider and that such provider be the program provider or a contractor of the program provider.

The proposed new rule also requires an individualized skills and socialization provider to document an individual's or legally authorized representative's decision for the individual not to participate in an activity the individual scheduled for on-site or off-site individualized skills and socialization.

Proposed new §262.913, Provision of In-Home Individualized Skills and Socialization, describes requirements for providing in-home individualized skills and socialization. The proposed new rule also describes documentation that a program provider must obtain before providing in-home individualized skills and socialization to an individual.

Proposed new §262.915, Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, establishes a combined service limit for on-site, off-site, and in-home individualized skills and socialization.

Proposed new §262.917, Staffing Ratios for Off-Site Individualized Skills and Socialization, describes the required ratios for off-site individualized skills and socialization of service providers to individuals in the TxHmL Program and other persons receiving off-site individualized skills and socialization or a similar service. The ratios in the proposed new rule include other persons receiving individualized skills and socialization in the DBMD Program and the HCS Program, and other persons receiving a similar service, to ensure that the ratios of service providers to individuals in the TxHmL Program receiving off-site individualized skills and socialization are maintained. If a ratio described in this section includes individuals with different LONs or other persons receiving off-site individualized skills and socialization or a similar service, the proposed new rule requires that the ratio be the lowest staff ratio required by §262.917 or other waiver program rules. The proposed new rule requires a service provider of off-site individualized skills and socialization assigned to the individuals and other persons described in a ratio to provide services only to the individuals and other persons represented in the ratio.

Proposed new §262.919, Discontinuation of Day Habilitation, provides that day habilitation, which includes in-home day habilitation, is not a service in the TxHmL Program effective March 1, 2023, to ensure HHSC's compliance with 42 CFR §441.301(c)(4) before the deadline established by the Centers for Medicare & Medicaid Services.

Proposed new §262.921, Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC, describes requirements for service coordinators and program providers if an applicant wants to receive on-site, off-site, or in-home individualized skills and socialization, such as including the service on the applicant's person-directed plan and initial individual plan of care (IPC) and developing an implementation plan for the service. The proposed new rule requires a service coordinator to ensure that an initial IPC effective on or after March 1, 2023 does not include day habilitation and requires a service coordinator to ensure that a renewal IPC effective on or after March 1, 2023, does not include day habilitation. The proposed new rule also requires a program provider or service coordinator to ensure that a revised IPC with an effective date during the period of March 1, 2023, and February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023.

Proposed new §262.923, Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, describes the qualifications for a service provider of

on-site, off-site, or in-home individualized skills and socialization.

Proposed new §262.925, Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, provides that HHSC pays for on-site, off-site, and in-home individualized skills and socialization in accordance with the reimbursement rates for on-site, off-site, and in-home individualized skills and socialization regardless of the individual's level of need. The proposed new rule provides that HHSC pays an approved enhanced staffing rate for off-site individualized skills and socialization for an individual. The proposed new rule prohibits a program provider from submitting a claim for on-site, off-site, or in-home individualized skills and socialization provided during the time an individual's services are suspended or after services are terminated, except that the program provider may submit a claim for the first day of the individual's suspension or termination. The proposed new rule describes the circumstances under which HHSC does not pay or recoups payment from a program provider for on-site, off-site, or in-home individualized skills and socialization. The proposed new rule provides that HHSC does not pay or recoups payment from a program provider for day habilitation provided on or after March 1, 2023. The proposed new rule provides that HHSC conducts provider fiscal compliance reviews to determine whether a program provider is in compliance with the new subchapter.

Proposed new §262.927, Enhanced Staffing Rate, allows a program provider to request the enhanced staffing rate for off-site individualized skills and socialization for an individual. The proposed rule requires a service coordinator to request the enhanced staffing rate for off-site individualized skills and socialization for an individual who receives off-site individualized skills and socialization through the consumer directed services (CDS) option if the CDS employer asks the service coordinator to request the enhanced staffing rate. The proposed rule also describes how a program provider and service coordinator make such a request. The proposed new rule provides that HHSC approves a request for the enhanced staffing rate if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual would typically receive. The proposed new rule provides that HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate and notifies a program provider or service coordinator through the HHSC data system when an enhanced staffing rate is approved or denied. The proposed new rule requires a service coordinator to notify the CDS employer and financial management services agency of HHSC's approval or denial of the enhanced staffing rate. The proposed new rule provides that a program provider may request an administrative hearing if HHSC denies a request for the enhanced staffing rate.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that the cost to state government to pay for the automation changes needed in the Texas Medicaid and Healthcare Partnership (TMHP) automated system to add new service codes to allow program providers to submit claims for individualized skills and socialization is \$13,300 General Revenue (GR) funds, (\$119,700 Federal Funds (FF)), \$133,000 All Funds (AF) for the State Fiscal Year (SFY) 2023 and \$0 GR, (\$0 FF, 0 AF) for SFYs 2024 - 2027.

During the years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will 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 also determined that the rules could have an adverse economic effect on small businesses and micro-businesses due to the cost to comply.

HHSC does not have the data to estimate the number of small businesses or micro-businesses subject to the rule, however as of January 24, 2022, there are 311 TxHmL program providers. As of January 24, 2022, there are 610 HCS and TxHmL legal entities. Legal entities include program providers that may be contracted to be both HCS program providers and TxHmL program providers and program providers that are only contracted to be HCS program providers or TxHmL program providers.

HHSC did not consider alternative methods to achieve the purpose of the proposed rules for small businesses or micro-businesses because implementing the new rules is necessary to comply with the federal regulations for home and community-based settings in 42 CFR §441.301(c)(4)(i) - (v).

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 receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, individuals in the TxHmL Program will have the opportunity to receive individualized skills and socialization, a new service that provides increased community integration, additional opportunities and supports to be competitively employed, and choice of the settings in which individualized skills and socialization is provided.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because program

providers may incur costs to update their policies and provide staff training to implement the new rules. However, HHSC lacks sufficient data to determine an estimate of these costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on this proposal will be held via GoToWebinar on September 7, 2022 from 8:00 a.m. to 12:00 p.m. (central time). The link to register for the GoToWebinar meeting is <https://register.gotowebinar.com/register/927810115195515152>.

The meeting date and time will be posted on the HHSC website at <https://www.hhs.texas.gov/providers/long-term-care-providers/home-community-based-services-hcs> or <https://www.hhs.texas.gov/providers/long-term-care-providers/texas-home-living-txhtml>.

Persons requiring further information, special assistance, or accommodations should contact McKenzie Sanchez at TxHmLPolicy@hhs.texas.gov.

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 22R037" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021, which authorizes the Executive Commissioner of HHSC to adopt rules necessary for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§262.901. Definitions.

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

(1) Abuse--

- (A) physical abuse;
- (B) sexual abuse; or
- (C) verbal or emotional abuse.

(2) Applicant--A Texas resident seeking services in the Texas Home Living Program (TxHmL).

(3) Calendar day--Any day, including weekends and holidays.

(4) CDS employer--Consumer directed services employer. This term has the same meaning as the term "employer" set forth in 40 TAC §41.103 (relating to Definitions).

(5) CDS option--Consumer directed services option. This term has the meaning set forth in 40 TAC §41.103.

(6) CFC--Community First Choice. A state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subpart K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice).

(7) CFC PAS/HAB--CFC personal assistance services/habilitation.

(8) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(9) Community setting--A setting accessible to the general public within an individual's community.

(10) Day habilitation--A TxHmL Program service that provides assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual.

(11) DFPS--The Department of Family and Protective Services.

(12) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(13) FMSA--Financial management services agency. This term has the meaning set forth in 40 TAC §41.103.

(14) HHSC--The Texas Health and Human Services Commission.

(15) ICAP--Inventory for Client and Agency Planning.

(16) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC for level of care determination and level of need assignment.

(17) Implementation plan--A written document developed by a program provider for an individual that, for each TxHmL Program service and CFC service on the individual's individual plan of care (IPC) to be provided by the program provider except for community support and CFC support management, includes:

(A) a list of outcomes identified in the person-directed plan that will be addressed using TxHmL Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of TxHmL Program services and CFC services needed to complete each objective;

(E) the frequency and duration of TxHmL Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, legally authorized representative, and the program provider.

(18) Individual--A person enrolled in the TxHmL Program.

(19) Individualized skills and socialization provider--A legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

(20) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the TxHmL Program.

(21) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each TxHmL Program service and each CFC service, except for CFC support management, to be provided to an individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than TxHmL Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(22) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(23) LAR--Legally authorized representative. A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(24) LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(25) LON--Level of need. An assignment given by HHSC to an applicant or individual that is derived from the ICAP service level score and from selected items on the ID/RC Assessment.

(26) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(27) PDP--Person-directed plan. A plan developed using an HHSC form that describes the supports and services necessary to

achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety.

(28) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(29) Program provider--A person, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with HHSC to provide TxHmL Program services, excluding a financial management services agency.

(30) Renewal IPC--An IPC required to be developed for an individual at least 30 but not more than 90 calendar days before the expiration of the individual's IPC in accordance with rules governing the TxHmL Program.

(31) Revised IPC--An initial IPC or renewal IPC that is revised during the IPC year in accordance with rules governing the TxHmL Program to add a new TxHmL Program service or CFC service or change the amount of an existing service.

(32) Service coordinator--An employee of a local intellectual and developmental disability authority who provides service coordination to an individual.

(33) Service provider--A person who directly provides a TxHmL Program service or CFC service to an individual.

(34) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(35) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(36) TxHmL Program--The Texas Home Living Program.

(37) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

§262.903. Types of Individualized Skills and Socialization.

The following are the three types of individualized skills and socialization:

(1) on-site individualized skills and socialization;

(2) off-site individualized skills and socialization; and

(3) in-home individualized skills and socialization.

§262.905. Description of On-Site and Off-Site Individualized Skills and Socialization.

(a) Individualized skills and socialization is a TxHmL Program service described in this section and in Appendix C of the TxHmL Program waiver application approved by CMS.

(b) On-site and off-site individualized skills and socialization:

(1) provide person-centered activities related to:

(A) acquiring, retaining, or improving self-help skills and adaptive skills necessary to live successfully in the community and participate in home and community life; and

(B) gaining or maintaining independence, socialization, community participation, current or future volunteer goals, or employment goals consistent with achieving the outcomes identified in an individual's PDP;

(2) support the individual's pursuit and achievement of employment through school, vocational rehabilitation, the TxHmL Program service of employment assistance, or the TxHmL Program service of supported employment;

(3) provide personal assistance for an individual who cannot manage personal care needs during an individualized skills and socialization activity;

(4) as determined by an assessment conducted by a registered nurse, provide assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician; and

(5) do not include activities in which an individual:

(A) produces marketable goods; and

(B) is paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act.

(c) On-site individualized skills and socialization:

(1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider;

(2) includes transportation of an individual from one on-site individualized skills and socialization location to another on-site individualized skills and socialization location;

(3) promotes an individual's development of skills and behavior that support independence and personal choice; and

(4) is not provided in:

(A) a setting in which an individual must not reside, as set forth in the rules governing the TxHmL Program, unless provided in an event open to the public; or

(B) the residence of an individual or another person.

(d) Off-site individualized skills and socialization:

(1) provides activities that:

(A) integrate an individual into the community; and

(B) promote the individual's development of skills and behavior that support independence and personal choice;

(2) is provided in a community setting chosen by the individual from among available community setting options;

(3) includes transportation of an individual from an on-site individualized skills and socialization location to an off-site individualized skills and socialization location and between off-site individualized skills and socialization locations; and

(4) is not provided in:

(A) a building in which on-site individualized skills and socialization is provided;

(B) a setting in which an individual must not reside, as set forth in the rules governing the TxHmL Program, unless provided in an event open to the public; or

(C) the residence of an individual or another person.

§262.907. Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization.

(a) In-home individualized skills and socialization is:

(1) assistance with acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside and participate successfully in the community;

(2) the provision of age-appropriate activities that enhance self-esteem and maximize functional level;

(3) reinforcement of skills or lessons taught:

(A) in school or other settings; or

(B) during the provision of any TxHmL Program service or non-waiver service;

(4) the provision of personal assistance for an individual who cannot manage personal care needs during the provision of in-home individualized skills and socialization; and

(5) as determined by an assessment conducted by a registered nurse, assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician.

(b) One of the following criteria must be met for an individual to receive in-home individualized skills and socialization:

(1) a physician must document that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) a licensed professional or behavioral supports service provider must document that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) the individual must be 55 years of age or older and request to receive in-home individualized skills and socialization.

§262.909. Exceptions to Certain Requirements During Declaration of Disaster.

(a) HHSC may allow program providers to use one or both of the exceptions in subsections (c) and (d) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC notifies program providers:

(1) if it allows an exception to be used; and

(2) if an exception is allowed to be used, the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) In this section "disaster area" means the area of the state specified in an executive order or proclamation described in subsection (a) of this section.

(c) Notwithstanding §262.907 of this subchapter (relating to Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization), an individual who resides in the disaster area is not required to meet any of the criteria described in §262.907(b) of this subchapter to receive in-home individualized skills and socialization.

(d) Notwithstanding §262.913 of this subchapter (relating to Provision of In-Home Individualized Skills and Socialization), if an individual who resides in the disaster area does not meet any of the criteria described in §262.907(b) of this subchapter to receive in-home individualized skills and socialization, a program provider is not required to obtain the documentation described in §262.913(b) of this subchapter.

§262.911. Provision of On-Site and Off-Site Individualized Skills and Socialization.

(a) On-site and off-site individualized skills and socialization must be provided by an individualized skills and socialization provider. An individualized skills and socialization provider must be the program provider or a contractor of the program provider.

(b) An individualized skills and socialization provider must make both on-site individualized skills and socialization and off-site individualized skills and socialization available to an individual.

(c) An individualized skills and socialization provider must provide on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with an individual's PDP, IPC, and implementation plan.

(d) An individualized skills and socialization provider must not require an individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization.

(e) If an individual does not want to participate in an activity the individual scheduled for on-site individualized skills and socialization or off-site individualized skills and socialization, or the LAR does not want the individual to participate in such activity, the individualized skills and socialization provider must document the decision not to participate in the individual's record.

§262.913. Provision of In-Home Individualized Skills and Socialization.

(a) A program provider must ensure that in-home individualized skills and socialization is provided in the residence of the individual receiving the service.

(b) In-home individualized skills and socialization is not required to be provided by an individualized skills and socialization provider.

(c) Before providing in-home individualized skills and socialization to an individual, a program provider must obtain documentation:

(1) from a physician that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) from a licensed professional or behavioral supports service provider that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) that the individual is 55 years of age or older and requests to receive in-home individualized skills and socialization.

§262.915. Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

The service limit for the combined total of on-site, off-site, and in-home individualized skills and socialization is:

(1) 1,560 hours during an IPC year;

(2) six hours per calendar day; and

(3) five days per calendar week.

§262.917. Staffing Ratios for Off-Site Individualized Skills and Socialization.

(a) The ratio of service providers of off-site individualized skills and socialization to persons receiving services off-site must be:

(1) no higher than one service provider of off-site individualized skills and socialization to four individuals without an enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:4); and

(2) no higher than one service provider of off-site individualized skills and socialization to two individuals with the enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:2).

(b) A ratio described in subsection (a)(1) and (2) of this section may include individuals with different LONs and other persons receiving off-site individualized skills and socialization or a similar service. If the ratio includes individuals with different LONs or other persons receiving off-site individualized skills and socialization or a similar service, the ratio must be one of the following, whichever is the lowest staffing ratio:

(1) the staffing ratio required by subsection (a) of this section;

(2) the staffing ratio required by §263.2017(a) of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), if a person in the HCS Program is one of the persons represented in the ratio; or

(3) the staffing ratio required by §260.507 of this title (relating to Staffing Ratios), if a person in the DBMD Program is one of the persons represented in the ratio.

(c) A service provider of off-site individualized skills and socialization assigned to the individuals represented in the staffing ratio required by subsection (a) of this section must provide services only to the individuals and other persons represented in the ratio.

§262.919. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the TxHmL Program, effective March 1, 2023, day habilitation, which includes in-home day habilitation, is not a service in the TxHmL Program.

§262.921. Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC.

(a) If an applicant wants to receive on-site or off-site individualized skills and socialization, or wants to receive and meets the criteria for in-home individualized skills and socialization:

(1) a service coordinator must include the type of individualized skills and socialization on the applicant's PDP and the type and amount of individualized skills and socialization on the initial IPC in accordance with the rules governing the TxHmL Program; and

(2) a program provider must develop an implementation plan for on-site, off-site, and in-home individualized skills and socialization.

(b) To renew or revise an IPC to include on-site, off-site, or in-home individualized skills and socialization, a service coordinator and program provider must comply with rules governing the TxHmL Program, which include developing an implementation plan that describes on-site, off-site, and in-home individualized skills and socialization.

(c) If an individual or the individual's LAR wants the individual to receive on-site or off-site individualized skills and socialization but not both, the service coordinator must document the decision in the individual's PDP.

(d) A service coordinator must ensure that an initial IPC that is effective on or after March 1, 2023, does not include day habilitation.

(e) A service coordinator must ensure that a renewal IPC that is effective on or after March 1, 2023, does not include day habilitation.

(f) A program provider or service coordinator must ensure that a revised IPC with an effective date that is during the period of March 1, 2023, through February 29, 2024, includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023.

§262.923. Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) A service provider of on-site, off-site, or in-home individualized skills and socialization must be at least 18 years of age and:

(1) have a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) have documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(b) A service provider of on-site or off-site individualized skills and socialization who provides transportation must:

(1) have a valid driver's license; and

(2) transport individuals in a vehicle insured in accordance with state law.

(c) A service provider of on-site, off-site, or in-home individualized skills and socialization must complete training as required by the rules governing the TxHmL Program.

§262.925. Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) Except as provided in subsection (b) of this section, HHSC pays for on-site, off-site, and in-home individualized skills and socialization provided to an individual at the reimbursement rates for on-site,

off-site and in-home individualized skills and socialization regardless of the individual's LON.

(b) If approved in accordance with §262.927 of this subchapter (relating to Enhanced Staffing Rate) HHSC pays an enhanced staffing rate for off-site individualized skills and socialization for an individual.

(c) If an individual's TxHmL Program services and CFC services are suspended or terminated, a program provider must not submit a claim for on-site, off-site, or in-home individualized skills and socialization provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination.

(d) HHSC does not pay a program provider for on-site, off-site, or in-home individualized skills and socialization, or recoups any payments made to the program provider for on-site, off-site, or in-home individualized skills and socialization if:

(1) the individual receiving on-site, off-site, or in-home individualized skills and socialization was, at the time on-site, off-site, or in-home individualized skills and socialization was provided, ineligible for the TxHmL Program;

(2) on-site, off-site, or in-home individualized skills and socialization is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(3) on-site, off-site, or in-home individualized skills and socialization is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(4) on-site, off-site, or in-home individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with a signed, dated, and authorized IPC that includes on-site, off-site, or in-home individualized skills and socialization;

(6) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the individual's PDP or implementation plan;

(7) on-site, off-site, or in-home individualized skills and socialization is provided before the individual's enrollment date into the TxHmL Program;

(8) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with this subchapter;

(9) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the TxHmL Program Billing Requirements;

(10) on-site, off-site, or in-home individualized skills and socialization is not documented in accordance with the TxHmL Program Billing Requirements;

(11) the program provider does not comply with 40 TAC §49.305 (relating to Records);

(12) the claim for on-site, off-site, or in-home individualized skills and socialization does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the TxHmL Program Billing Requirements;

(13) HHSC determines that on-site, off-site, or in-home individualized skills and socialization would have been paid for by a source other than the TxHmL Program if the program provider had

submitted to the other source a proper, complete, and timely request for payment for on-site, off-site, or in-home individualized skills and socialization;

(14) on-site, off-site, or in-home individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide on-site, off-site, or in-home individualized skills and socialization as described in §262.923 of this subchapter (relating to Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization) and in the TxHmL Program Billing Requirements;

(15) on-site, off-site, or in-home individualized skills and socialization was not provided;

(16) on-site or off-site individualized skills and socialization is provided during a period of time that the individual produced marketable goods and was paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act;

(17) in-home individualized skills and socialization is not provided in the residence of the individual as required by §262.913(a) of this subchapter (relating to Provision of In-Home Individualized Skills and Socialization); or

(18) in-home individualized skills and socialization is provided to an individual without the documentation required by §262.913(c) of this subchapter.

(e) HHSC does not pay a program provider for day habilitation, or recoups any payments made to the program provider for day habilitation, if day habilitation is provided on or after March 1, 2023, even if an individual's IPC includes day habilitation on or after March 1, 2023.

(f) HHSC conducts provider fiscal compliance reviews, also known as billing and payment reviews, in accordance with rules governing the TxHmL Program and the TxHmL Program Billing Requirements to determine whether a program provider is in compliance with this subchapter.

§262.927. *Enhanced Staffing Rate.*

(a) A program provider may request the enhanced staffing rate for off-site individualized skills and socialization described in §262.925(b) of this subchapter (relating to Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization) for an individual who receives off-site individualized skills and socialization from the program provider.

(b) A service coordinator must request the enhanced staffing rate for off-site individualized skills and socialization described in §262.925(b) of this subchapter for an individual who receives off-site individualized skills and socialization through the CDS option if the CDS employer asks the service coordinator to request the enhanced staffing rate.

(c) A program provider or service coordinator makes the request described in subsection (a) or (b) of this section by submitting the following documentation to HHSC:

- Form:
- (1) a completed HHSC Enhanced Staffing Rate Request
 - (2) the most recent ICAP scoring booklet;
 - (3) the most recent ID/RC Assessment;
 - (4) the most recent PDP;
 - (5) the most recent implementation plan for individualized skills and socialization; and

(6) other documentation that supports the individual's request for an enhanced staffing rate, which may include:

(A) the behavior support plan;

(B) a physician's order;

(C) an assessment completed by a service provider of a professional therapy;

(D) the nursing assessment; and

(E) the CFC PAS/HAB assessment.

(d) HHSC approves a request made in accordance with subsections (a) - (c) of this section if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual typically receives. The requirement for additional support may be because of the individual's mobility, medical, or behavioral needs.

(e) HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate. If HHSC reviews an enhanced staffing rate, a program provider or service coordinator must submit documentation supporting the enhanced staffing rate to HHSC in accordance with HHSC's request.

(f) HHSC notifies a program provider or service coordinator that an enhanced staffing rate is approved or denied through the HHSC data system.

(g) A service coordinator must notify the CDS employer and FMSA of HHSC's approval or denial described in subsection (d) of this section.

(h) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC:

(1) denies a request made in accordance with subsection (a) of this section; or

(2) denies an enhanced staffing rate based on a review described in subsection (c) 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 28, 2022.

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Health and Human Services Commission

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For further information, please call: (512) 438-4639



CHAPTER 263. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM AND COMMUNITY FIRST CHOICE (CFC) SUBCHAPTER L. INDIVIDUALIZED SKILLS AND SOCIALIZATION

26 TAC §§263.2001, 263.2003, 263.2005, 263.2007, 263.2009, 263.2011, 263.2013, 263.2015, 263.2017, 263.2019, 263.2021, 263.2023, 263.2025, 263.2027

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §263.2001, concerning Definitions; §263.2003, concerning Types of Individualized Skills and Socialization; §263.2005, concerning Description of On-Site and Off-Site Individualized Skills and Socialization; §263.2007, concerning Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization; §263.2009, concerning Exceptions to Certain Requirements During Declaration of Disaster; §263.2011, concerning Provision of On-Site and Off-Site Individualized Skills and Socialization; §263.2013, concerning Provision of In-Home Individualized Skills and Socialization; §263.2015, concerning Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; §263.2017, concerning Staffing Ratios for Off-Site Individualized Skills and Socialization; §263.2019, concerning Discontinuation of Day Habilitation; §263.2021, concerning Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC; §263.2023, concerning Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; §263.2025, concerning Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization; and §263.2027, concerning Enhanced Staffing Rate, in Texas Administrative Code (TAC), new Chapter 263, Subchapter L, Individualized Skills and Socialization.

BACKGROUND AND PURPOSE

Title 42, Code of Federal Regulations (CFR), §441.301(c)(4)(i) - (v), require home and community based settings in programs authorized by §1915(c) of the Social Security Act to have certain qualities, including being integrated in and supporting full access of individuals to the greater community. The Centers for Medicare and Medicaid Services is requiring that states be in compliance with these regulations by March 17, 2023.

The 2020-21 General Appropriations Act (GAA), House Bill 1, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21) required HHSC to develop a plan to replace day habilitation in its Medicaid §1915(c) waiver programs for individuals with intellectual and developmental disabilities with more integrated services that maximize participation and integration of the individuals in the community.

In accordance with Rider 21, HHSC developed a plan to replace day habilitation provided in the Home and Community-Based Services (HCS), Texas Home Living (TxHmL), and Deaf Blind with Multiple Disabilities (DBMD) Programs with individualized skills and socialization. The plan included the use of staffing ratios while providing off-site individualized skills and socialization to individuals to ensure that the individuals receive more personalized attention and more easily meet their personal goals and to ensure the health and safety of the individuals.

The 2022-2023 GAA, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission, Rider 23) authorized funding for the provision of individualized skills and socialization in the HCS, TxHmL, and DBMD Programs.

The proposed rules implement the plan required by Rider 21 to replace day habilitation with individualized skills and socializa-

tion in the HCS Program and will ensure that HHSC is in compliance with 42 CFR §441.301(c)(4)(i) - (v) by March 17, 2023.

The proposed rules describe the three types of individualized skills and socialization, on-site individualized skills and socialization, off-site individualized skills and socialization, and in-home individualized skills and socialization. The proposed rules require that on-site and off-site individualized skills and socialization be provided by an individualized skills and socialization provider.

The rules requiring a provider of individualized skills and socialization to be licensed in accordance with Texas Human Resources Code Chapter 103, are being proposed in 26 TAC Chapter 559 and published elsewhere in this issue of the *Texas Register*. The rules in Chapter 559 will require an individualized skills and socialization provider to be licensed as a day activity and health services facility with a special designation for individualized skills and socialization.

The proposed rules include requirements for an individualized skills and socialization provider to make available both on-site and off-site individualized skills and socialization to individuals and meet staffing ratios based on levels of need for off-site individualized skills and socialization.

The proposed rules also include requirements for the provision of in-home individualized skills and socialization including criteria that must be met for an individual to receive the service and that the service must be provided in the residence of the individual receiving the service.

The proposed rules discontinue day habilitation which includes in-home day habilitation effective March 1, 2023.

The proposed rules provide that HHSC may allow program providers to use one or more of the exceptions specified in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. This provision is added to help ensure that providers are able to operate and provide services effectively during a disaster.

The rules implementing individualized skills and socialization in the TxHmL and DBMD Programs are being proposed in 26 TAC Chapter 262 Subchapter J and in 26 TAC Chapter 260, Subchapter I and published elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

Proposed new §263.2001, Definitions, defines the terms used in the new subchapter including "individualized skills and socialization provider" which is defined as a legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

Proposed new §263.2003, Types of Individualized Skills and Socialization, identifies the three types of individualized skills and socialization.

Proposed new §263.2005, Description of On-Site and Off-Site Individualized Skills and Socialization, provides a general description of on-site and off-site individualized skills and socialization. The proposed new rule also describes where on-site and off-site individualized skills and socialization are provided.

Proposed new §263.2007, Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization, provides a general description of in-home individualized skills and socialization. The proposed new rule also describes the criteria that must be met for an individual to receive in-home individualized skills and socialization.

Proposed new §263.2009, Exceptions to Certain Requirements During Declaration of Disaster, provides that HHSC may allow program providers and service coordinators to use one or more of the exceptions described in the rule while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. The rule provides that HHSC notifies program providers and local intellectual and developmental disability authorities if it allows an exception to be used and defines "disaster area."

Proposed new §263.2011, Provision of On-Site and Off-Site Individualized Skills and Socialization, describes requirements for providing on-site and off-site individualized skills and socialization, including that an individualized skills and socialization provider make both on-site and off-site individualized skills and socialization available to an individual and that such provider allow an individual to receive off-site individualized skills and socialization without requiring the individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization. The proposed new rule requires individualized skills and socialization to be provided by an individualized skills and socialization provider and that such provider be the program provider or a contractor of the program provider. The proposed new rule also requires an individualized skills and socialization provider to document an individual's or legally authorized representative's decision for the individual not to participate in an activity the individual scheduled for on-site or off-site individualized skills and socialization.

Proposed new §263.2013, Provision of In-Home Individualized Skills and Socialization, describes requirements for providing in-home individualized skills and socialization. The proposed new rule also describes documentation that a program provider must obtain before providing in-home individualized skills and socialization to an individual.

Proposed new §263.2015, Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, establishes a combined service limit for on-site, off-site, and in-home individualized skills and socialization.

Proposed new §263.2017, Staffing Ratios for Off-Site Individualized Skills and Socialization, describes the required ratios for off-site individualized skills and socialization of service providers to individuals in the HCS Program and other persons receiving off-site individualized skills and socialization or a similar service. The ratios in the proposed new rule include other persons receiving individualized skills and socialization in the DBMD Program and the TxHmL Program, and other persons receiving a similar service, to ensure that the ratios of service providers to individuals in the HCS Program receiving off-site individualized skills and socialization are maintained. If a ratio described in this section includes individuals with different levels of need (LONs) and other persons receiving off-site individualized skills and socialization or a similar service, the proposed new rule requires that the ratio be the lowest staff ratio required by §263.2017 or other waiver program rules. The proposed new rule requires a service provider of off-site individualized skills and socialization assigned to the individuals and other persons described in a ratio to provide services only to the individuals and other persons represented in the ratio.

Proposed new §263.2019, Discontinuation of Day Habilitation, provides that day habilitation, which includes in-home day habilitation, is not a service in the HCS Program effective March 1, 2023, to ensure HHSC's compliance with 42 CFR §441.301(c)(4).

before the deadline established by the Centers for Medicare & Medicaid Services.

Proposed new §263.2021, Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC, describes requirements for service coordinators and program providers if an applicant wants to receive on-site, off-site, or in-home individualized skills and socialization, such as including the service on the applicant's person-directed plan and initial individual plan of care (IPC) and developing an implementation plan for the service. The proposed new rule requires a service coordinator to ensure that an initial IPC effective on or after March 1, 2023, does not include day habilitation and requires a program provider to ensure that a renewal IPC effective on or after March 1, 2023, does not include day habilitation. The proposed new rule also requires a program provider or service coordinator to ensure that a revised IPC with an effective date during the period of March 1, 2023, and February 29, 2024 includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023.

Proposed new §263.2023, Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, describes the qualifications for a service provider of on-site, off-site, or in-home individualized skills and socialization.

Proposed new §263.2025, Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization, provides that HHSC pays for on-site, off-site, and in-home individualized skills and socialization in accordance with an individual's LON and the reimbursement rates for on-site, off-site, and in-home individualized skills and socialization. The proposed new rule provides that HHSC pays an approved enhanced staffing rate for off-site individualized skills and socialization for an individual with a LON 1 or LON 5. The proposed new rule prohibits a program provider from submitting a claim for on-site, off-site, or in-home individualized skills and socialization provided during the time an individual's services are suspended or after services are terminated, except that the program provider may submit a claim for the first day of the individual's suspension or termination. The proposed new rule describes the circumstances under which HHSC does not pay or recoups payment from a program provider for on-site, off-site, or in-home individualized skills and socialization. The proposed new rule provides that HHSC does not pay or recoups payment from a program provider for day habilitation provided on or after March 1, 2023. The proposed new rule provides that HHSC conducts provider fiscal compliance reviews to determine whether a program provider is in compliance with the new subchapter.

Proposed new §263.2027, Enhanced Staffing Rate, provides that a program provider may request the enhanced staffing rate for off-site individualized skills and socialization for an individual with a LON 1 or LON 5 and describes how the request must be made. The proposed new rule provides that HHSC approves a request for the enhanced staffing rate if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual would receive with the individual's assigned LON. The proposed new rule provides that HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate and notifies a program provider through the HHSC data system when an enhanced staffing rate is approved or denied. The proposed new rule provides that a program provider may request an ad-

ministrative hearing if HHSC denies a request for the enhanced staffing rate.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that the cost to state government to pay for the automation changes needed in the Texas Medicaid and Healthcare Partnership (TMHP) automated system to add new service codes to allow program providers to submit claims for individualized skills and socialization is \$13,300 General Revenue (GR) funds (\$119,700 Federal Funds (FF)), \$133,000 All Funds (AF)) for the State Fiscal Year (SFY) 2023 and \$0 GR, (\$0 FF, 0 AF) for SFYs 2024 - 2027.

During the years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will 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 also determined that the rules could have an adverse economic effect on small businesses and micro-businesses due to the cost to comply.

HHSC does not have the data to estimate the number of small businesses or micro-businesses subject to the rule, however as of January 24, 2022, there are 583 HCS program providers. As of January 24, 2022, there are 610 HCS and TxHmL legal entities. Legal entities include program providers that may be contracted to be both HCS program providers and TxHmL program providers and program providers that are only contracted to be HCS program providers or TxHmL program providers.

HHSC did not consider alternative methods to achieve the purpose of the proposed rules for small businesses or micro-businesses because implementing the new rules is necessary to comply with the federal regulations for home and community-based settings in 42 CFR §441.301(c)(4)(i) - (v).

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 receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, individuals in the HCS Program will have the opportunity to receive individualized skills and socialization, a new service that provides increased community integration, additional opportunities and supports to be competitively employed, and choice of the settings in which individualized skills and socialization is provided.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because program providers may incur costs to update their policies and provide staff training to implement the new rules. However, HHSC lacks sufficient data to determine an estimate of these costs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on this proposal will be held via GoToWebinar on September 7, 2022 from 8:00 a.m. to 12:00 p.m. (central time). The link to register for the GoToWebinar meeting is <https://register.gotowebinar.com/register/927810115195515152>.

The meeting date and time will be posted on the HHSC website at <https://www.hhs.texas.gov/providers/long-term-care-providers/home-community-based-services-hcs> or <https://www.hhs.texas.gov/providers/long-term-care-providers/texas-home-living-txhtml>.

Persons requiring further information, special assistance, or accommodations should contact McKenzie Sanchez at TxHmLPolicy@hhs.texas.gov.

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If 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 22R037" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021, which authorizes the Exec-

utive Commissioner of HHSC to adopt rules necessary for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§263.2001. Definitions.

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

(1) Abuse--

(A) physical abuse;

(B) sexual abuse; or

(C) verbal or emotional abuse.

(2) Applicant--A Texas resident seeking services in the Home and Community-based Services (HCS) Program.

(3) Calendar day--Any day, including weekends and holidays.

(4) CFC--Community First Choice. A state plan option governed by Code of Federal Regulations, Title 42, Chapter 441, Subpart K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice).

(5) CFC PAS/HAB--CFC personal assistance services/habilitation.

(6) CMS--Centers for Medicare & Medicaid Services. The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

(7) Community setting--A setting accessible to the general public within an individual's community.

(8) Day habilitation--An HCS Program service that provides assistance with acquiring, retaining, or improving self-help, socialization, and adaptive skills provided in a location other than the residence of an individual.

(9) DFPS--The Department of Family and Protective Services.

(10) Exploitation--The illegal or improper act or process of using, or attempting to use, an individual or the resources of an individual for monetary or personal benefit, profit, or gain.

(11) HCS Program--The Home and Community-based Services Program.

(12) HHSC--The Texas Health and Human Services Commission.

(13) ICAP--Inventory for Client and Agency Planning.

(14) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. A form used by HHSC for level of care determination and level of need assignment.

(15) Implementation plan--A written document developed by a program provider for an individual that, for each HCS Program service and CFC service on the individual's individual plan of care (IPC) to be provided by the program provider, except for supported home living and CFC support management, includes:

(A) a list of outcomes identified in the person-directed plan that will be addressed using HCS Program services and CFC services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

and (i) observable, measurable, and outcome-oriented;

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of units of HCS Program services and CFC services needed to complete each objective;

(E) the frequency and duration of HCS Program services and CFC services needed to complete each objective; and

(F) the signature and date of the individual, legally authorized representative, and the program provider.

(16) Individual--A person enrolled in the HCS Program.

(17) Individualized skills and socialization provider--A legal entity licensed in accordance with Texas Human Resources Code Chapter 103.

(18) Initial IPC--The first IPC for an individual developed before the individual's enrollment into the HCS Program.

(19) IPC--Individual plan of care. A written plan that:

(A) states:

(i) the type and amount of each HCS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year;

(ii) the services and supports to be provided to the individual through resources other than HCS Program services or CFC services, including natural supports, medical services, and educational services; and

(iii) if an individual will receive CFC support management; and

(B) is authorized by HHSC.

(20) IPC year--The effective period of an initial IPC and renewal IPC as described in this paragraph.

(A) Except as provided in subparagraph (B) of this paragraph, the IPC year for an initial and renewal IPC is a 365-calendar day period starting on the begin date of the initial or renewal IPC.

(B) If the begin date of an initial or renewal IPC is March 1 or later in a year before a leap year or January 1 - February 28 of a leap year, the IPC year for the initial or renewal IPC is a 366-calendar day period starting on the begin date of the initial or renewal IPC.

(C) A revised IPC does not change the begin or end date of an IPC year.

(21) LAR--Legally authorized representative. A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(22) LOC--Level of care. A determination given to an applicant or individual as part of the eligibility determination process based on data submitted on the ID/RC Assessment.

(23) LON--Level of need. An assignment given by HHSC to an individual upon which reimbursement for certain services is based.

(24) Neglect--A negligent act or omission that caused physical or emotional injury or death to an individual or placed an individual at risk of physical or emotional injury or death.

(25) PDP--Person-directed plan. A plan developed using an HHSC form that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or individual and LAR and to ensure the applicant's or individual's health and safety.

(26) Physical abuse--Any of the following:

(A) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, that caused physical injury or death to an individual or placed an individual at risk of physical injury or death;

(B) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual;

(C) the use of a restraint on an individual not in compliance with federal and state laws, rules, and regulations; or

(D) seclusion.

(27) Program provider--A person, as defined in 40 TAC §49.102 (relating to Definitions), that has a contract with HHSC to provide HCS Program services, excluding a financial management services agency.

(28) Renewal IPC--An IPC developed for an individual in accordance with the rules governing the HCS Program.

(29) Revised IPC--An initial IPC or a renewal IPC that is revised during an IPC year in accordance with the rules governing the HCS Program to add a new HCS Program service or CFC service or change the amount of an existing service.

(30) Service coordinator--An employee of a local intellectual and developmental disability authority who provides service coordination to an individual.

(31) Service provider--A person who directly provides an HCS Program service or CFC service to an individual.

(32) Sexual abuse--Any of the following:

(A) sexual exploitation of an individual;

(B) non-consensual or unwelcomed sexual activity with an individual; or

(C) consensual sexual activity between an individual and a service provider, staff member, volunteer, or controlling person, unless a consensual sexual relationship with an adult individual existed before the service provider, staff member, volunteer, or controlling person became a service provider, staff member, volunteer, or controlling person.

(33) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(34) Verbal or emotional abuse--Any act or use of verbal or other communication, including gestures:

(A) to:

(i) harass, intimidate, humiliate, or degrade an individual; or

(ii) threaten an individual with physical or emotional harm; and

(B) that:

(i) results in observable distress or harm to the individual; or

(ii) is of such a serious nature that a reasonable person would consider it harmful or a cause of distress.

§263.2003. Types of Individualized Skills and Socialization.

The following are the three types of individualized skills and socialization:

- (1) on-site individualized skills and socialization;
- (2) off-site individualized skills and socialization; and
- (3) in-home individualized skills and socialization.

§263.2005. Description of On-Site and Off-Site Individualized Skills and Socialization.

(a) Individualized skills and socialization is an HCS Program service described in this section and in Appendix C of the HCS Program waiver application approved by CMS.

(b) On-site and off-site individualized skills and socialization:

(1) provide person-centered activities related to:

(A) acquiring, retaining, or improving self-help skills and adaptive skills necessary to live successfully in the community and participate in home and community life; and

(B) gaining or maintaining independence, socialization, community participation, current or future volunteer goals, or employment goals consistent with achieving the outcomes identified in an individual's PDP;

(2) supports the individual's pursuit and achievement of employment through school, vocational rehabilitation, the HCS Program service of employment assistance, or the HCS Program service of supported employment;

(3) provides personal assistance for an individual who cannot manage personal care needs during an individualized skills and socialization activity;

(4) as determined by an assessment conducted by a registered nurse, provides assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician; and

(5) does not include activities in which an individual:

(A) produces marketable goods; and

(B) is paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act.

(c) On-site individualized skills and socialization:

(1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider;

(2) includes transportation of an individual from one on-site individualized skills and socialization location to another on-site individualized skills and socialization location;

(3) promotes an individual's development of skills and behavior that support independence and personal choice; and

(4) is not provided in:

(A) a setting in which an individual must not reside, as set forth in the rules governing the HCS Program, unless provided in an event open to the public; or

(B) the residence of an individual or another person.

(d) Off-site individualized skills and socialization:

(1) provides activities that:

(A) integrate an individual into the community; and

(B) promote the individual's development of skills and behavior that support independence and personal choice;

(2) is provided in a community setting chosen by the individual from among available community setting options;

(3) includes transportation of an individual from an on-site individualized skills and socialization location to an off-site individualized skills and socialization location and between off-site individualized skills and socialization locations; and

(4) is not provided in:

(A) a building in which on-site individualized skills and socialization is provided;

(B) a setting in which an individual must not reside, as set forth in the rules governing the HCS Program, unless provided in an event open to the public; or

(C) the residence of an individual or another person.

§263.2007. Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization.

(a) In-home individualized skills and socialization is:

(1) assistance with acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside and participate successfully in the community;

(2) the provision of age-appropriate activities that enhance self-esteem and maximize functional level;

(3) reinforcement of skills or lessons taught:

(A) in school or other settings; or

(B) during the provision of any HCS Program service or non-waiver service;

(4) the provision of personal assistance for an individual who cannot manage personal care needs during the provision of in-home individualized skills and socialization; and

(5) as determined by an assessment conducted by a registered nurse, assistance with medications and the performance of tasks delegated by a registered nurse in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code Chapter 157, as documented by the physician.

(b) One of the following criteria must be met for an individual to receive in-home individualized skills and socialization:

(1) a physician must document that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) a licensed professional or behavioral supports service provider must document that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) the individual must be 55 years of age or older and request to receive in-home individualized skills and socialization.

§263.2009. Exceptions to Certain Requirements During Declaration of Disaster.

(a) HHSC may allow program providers to use one or both of the exceptions in subsections (c) and (d) of this section while an executive order or proclamation declaring a state of disaster under Texas Government Code §418.014 is in effect. HHSC notifies program providers:

(1) if it allows an exception to be used; and

(2) if an exception is allowed to be used, the date the exception must no longer be used, which may be before the declaration of a state of disaster expires.

(b) In this section "disaster area" means the area of the state specified in an executive order or proclamation described in subsection (a) of this section.

(c) Notwithstanding §263.2007 of this chapter (relating to Description of and Criteria for an Individual to Receive In-Home Individualized Skills and Socialization), an individual who resides in the disaster area is not required to meet any of the criteria described in §263.2007(b) of this chapter to receive in-home individualized skills and socialization.

(d) Notwithstanding §263.2013 of this chapter (relating to Provision of In-Home Individualized Skills and Socialization), if an individual who resides in the disaster area does not meet any of the criteria described in §263.2007(b) of this chapter to receive in-home individualized skills and socialization, a program provider is not required to obtain the documentation described in §263.2013(b) of this chapter.

§263.2011. Provision of On-Site and Off-Site Individualized Skills and Socialization.

(a) On-site and off-site individualized skills and socialization must be provided by an individualized skills and socialization provider. An individualized skills and socialization provider must be the program provider or a contractor of the program provider.

(b) An individualized skills and socialization provider must make both on-site individualized skills and socialization and off-site individualized skills and socialization available to an individual.

(c) An individualized skills and socialization provider must provide on-site individualized skills and socialization and off-site individualized skills and socialization in accordance with an individual's PDP, IPC, and implementation plan.

(d) An individualized skills and socialization provider must not require an individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization.

(e) If an individual does not want to participate in an activity the individual scheduled for on-site individualized skills and socialization or off-site individualized skills and socialization, or the LAR does not want the individual to participate in such activity, the individualized skills and socialization provider must document the decision not to participate in the individual's record.

§263.2013. Provision of In-Home Individualized Skills and Socialization.

(a) A program provider must ensure that in-home individualized skills and socialization is provided in the residence of the individual receiving the service.

(b) In-home individualized skills and socialization is not required to be provided by an individualized skills and socialization provider.

(c) Before providing in-home individualized skills and socialization to an individual, a program provider must obtain documentation:

(1) from a physician that the individual's medical condition justifies the provision of in-home individualized skills and socialization;

(2) from a licensed professional or behavioral supports service provider that the individual's behavioral issues justify the provision of in-home individualized skills and socialization; or

(3) that the individual is 55 years of age or older and requests to receive in-home individualized skills and socialization.

§263.2015. Service Limit for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

The service limit for the combined total of on-site, off-site, and in-home individualized skills and socialization is:

(1) 1560 hours during an IPC year;

(2) six hours per calendar day; and

(3) five days per calendar week.

§263.2017. Staffing Ratios for Off-Site Individualized Skills and Socialization.

(a) The ratio of service providers of off-site individualized skills and socialization to persons receiving services off-site must be:

(1) no higher than one service provider of off-site individualized skills and socialization to six individuals with an LON 1 without an enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:6);

(2) no higher than one service provider of off-site individualized skills and socialization to four individuals with an LON 5 without an enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:4);

(3) no higher than one service provider of off-site individualized skills and socialization to two individuals with an LON 8 or an LON 6 and other persons receiving off-site individualized skills and socialization or a similar service (1:2);

(4) no higher than one service provider of individualized skills and socialization to two individuals with an LON 1 with the enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:2);

(5) no higher than one service provider of off-site individualized skills and socialization to two individuals with an LON 5 with the enhanced staffing rate and other persons receiving off-site individualized skills and socialization or a similar service (1:2); and

(6) no higher than one service provider of off-site individualized skills and socialization to one individual with an LON 9 and other persons receiving off-site individualized skills and socialization or a similar service (1:1).

(b) A ratio described in subsection (a)(1)-(6) of this section may include individuals with different LONs and other persons receiving off-site individualized skills and socialization or a similar service. If the ratio includes individuals with different LONs or other persons receiving off-site individualized skills and socialization or a similar service, the ratio must be one of the following, whichever is the lowest staffing ratio:

(1) the staffing ratio for the individual with highest level of need;

(2) the staffing ratio required by §262.917(a) of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), if a person in the TxHmL Program is one of the persons represented in the ratio; or

(3) the staffing ratio required by §260.507(a) of this title (relating to Staffing Ratios), if a person in the DBMD Program is one of the persons represented in the ratio.

(c) A service provider of off-site individualized skills and socialization assigned to the individuals represented in a ratio in subsection (a) of this section must provide services only to the individuals and other persons represented in the ratio.

§263.2019. Discontinuation of Day Habilitation.

Notwithstanding other rules governing the HCS Program, effective March 1, 2023, day habilitation, which includes in-home day habilitation, is not a service in the HCS Program.

§263.2021. Including On-Site, Off-Site, and In-Home Individualized Skills and Socialization on an IPC.

(a) If an applicant wants to receive on-site or off-site individualized skills and socialization, or wants to receive and meets the criteria for in-home individualized skills and socialization:

(1) a service coordinator must include the type of individualized skills and socialization on the applicant's PDP and the type and amount of individualized skills and socialization on the initial IPC in accordance with the rules governing the HCS Program; and

(2) a program provider must develop an implementation plan for on-site, off-site, and in-home individualized skills and socialization.

(b) To renew or revise an IPC to include on-site, off-site, or in-home individualized skills and socialization, a service coordinator and program provider must comply with rules governing the HCS Program, which include developing an implementation plan that describes on-site, off-site, and in-home individualized skills and socialization.

(c) If an individual or the individual's LAR wants the individual to receive on-site or off-site individualized skills and socialization, but not both, the service coordinator must document the decision in the individual's PDP.

(d) A service coordinator must ensure that an initial IPC that is effective on or after March 1, 2023, does not include day habilitation.

(e) A program provider must ensure that a renewal IPC that is effective on or after March 1, 2023, does not include day habilitation.

(f) A program provider or service coordinator must ensure that a revised IPC with an effective date that is during the period of March 1, 2023, through February 29, 2024, includes only the amount of day habilitation that the program provider provided to the individual before March 1, 2023.

§263.2023. Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) A service provider of on-site, off-site, or in-home individualized skills and socialization must be at least 18 years of age and:

(1) have a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) have documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) a written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals being served.

(b) A service provider of on-site or off-site individualized skills and socialization who provides transportation must:

(1) have a valid driver's license; and

(2) transport individuals in a vehicle insured in accordance with state law.

(c) A service provider of on-site, off-site, or in-home individualized skills and socialization must complete training as required by the rules governing the HCS Program.

§263.2025. Program Provider Reimbursement for On-Site, Off-Site, and In-Home Individualized Skills and Socialization.

(a) Except as provided in subsection (b) of this section, HHSC pays for on-site, off-site, and in-home individualized skills and socialization provided to an individual in accordance with an individual's LON and the reimbursement rates for on-site, off-site, and in-home individualized skills and socialization.

(b) If approved in accordance with §263.2027 of this subchapter (relating to Enhanced Staffing Rate) HHSC pays an enhanced staffing rate for off-site individualized skills and socialization for an individual with a LON 1 or LON 5.

(c) If an individual's HCS Program services and CFC services are suspended or terminated, a program provider must not submit a claim for on-site, off-site, or in-home individualized skills and socialization provided during the period of the individual's suspension or after the termination, except that the program provider may submit a claim for the first day of the individual's suspension or termination.

(d) HHSC does not pay a program provider for on-site, off-site, or in-home individualized skills and socialization, or recoups any payments made to the program provider for on-site, off-site, or in-home individualized skills and socialization, if:

(1) the individual receiving on-site, off-site, or in-home individualized skills and socialization was, at the time on-site, off-site, or in-home individualized skills and socialization was provided, ineligible for the HCS Program;

(2) on-site, off-site, or in-home individualized skills and socialization is provided to an individual during a period of time for which there is not a signed, dated, and authorized IPC for the individual;

(3) on-site, off-site, or in-home individualized skills and socialization is provided during a period of time for which there is not a signed and dated ID/RC Assessment for the individual;

(4) on-site, off-site, or in-home individualized skills and socialization is provided during a period of time for which the individual did not have an LOC determination;

(5) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with a signed, dated, and authorized IPC that includes on-site, off-site, or in-home individualized skills and socialization;

(6) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the individual's PDP or implementation plan;

(7) on-site, off-site, or in-home individualized skills and socialization is provided before the individual's enrollment date into the HCS Program;

(8) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with this subchapter;

(9) on-site, off-site, or in-home individualized skills and socialization is not provided in accordance with the HCS Program Billing Requirements;

(10) on-site, off-site, or in-home individualized skills and socialization is not documented in accordance with the HCS Program Billing Requirements;

(11) the program provider does not comply with 40 TAC §49.305 (relating to Records);

(12) the claim for on-site, off-site, or in-home individualized skills and socialization does not meet the requirements in 40 TAC §49.311 (relating to Claims Payment) or the HCS Program Billing Requirements;

(13) HHSC determines that on-site, off-site, or in-home individualized skills and socialization would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for on-site, off-site, or in-home individualized skills and socialization;

(14) on-site, off-site, or in-home individualized skills and socialization is provided by a service provider who does not meet the qualifications to provide on-site, off-site, or in-home individualized skills and socialization as described in §263.2023 of this subchapter (relating to Service Provider Qualifications for On-Site, Off-Site, and In-Home Individualized Skills and Socialization) and in the HCS Program Billing Requirements;

(15) on-site, off-site, or in-home individualized skills and socialization was paid at an incorrect LON because the information entered in the HHSC data system from a completed ID/RC Assessment is not identical to the information on the completed ID/RC Assessment;

(16) on-site, off-site, or in-home individualized skills and socialization was not provided;

(17) on-site or off-site individualized skills and socialization is provided during a period of time that the individual produced marketable goods and was paid below minimum wage for producing the goods in accordance with Section 14(c) of the Fair Labor Standards Act;

(18) in-home individualized skills and socialization is not provided in the residence of the individual as required by §263.2013(a) of this subchapter (relating to Provision of In-Home Individualized Skills and Socialization); or

(19) in-home individualized skills and socialization is provided to an individual without the documentation required by §263.2013(c) of this subchapter.

(e) HHSC does not pay a program provider for day habilitation, or recoups any payments made to the program provider for day habilitation, if day habilitation is provided on or after March 1, 2023, even if an individual's IPC includes day habilitation on or after March 1, 2023.

(f) HHSC conducts provider fiscal compliance reviews, also known as billing and payment reviews, in accordance with rules governing the HCS Program and the HCS Program Billing Requirements to determine whether a program provider is in compliance with this subchapter.

§263.2027. Enhanced Staffing Rate.

(a) A program provider may request the enhanced staffing rate for off-site individualized skills and socialization described in §263.2025(b) of this subchapter (relating to Program Provider Reimbursement for Individualized Skills and Socialization) for an individual with a LON 1 or LON 5 by submitting the following documentation to HHSC:

(1) a completed HHSC Enhanced Staffing Rate Request Form;

(2) the most recent ICAP scoring booklet;

(3) the most recent ID/RC Assessment;

(4) the most recent PDP;

(5) the most recent implementation plan for individualized skills and socialization; and

(6) other documentation that supports the individual's request for an enhanced staffing rate, which may include:

(A) the behavior support plan;

(B) a physician's order;

(C) an assessment completed by a service provider of a professional therapy;

(D) the nursing assessment; and

(E) the CFC PAS/HAB assessment.

(b) HHSC approves a request made in accordance with subsection (a) of this section if the documentation submitted to HHSC demonstrates that to participate in off-site individualized skills and socialization, the individual requires more service provider support than the individual would receive with the individual's assigned LON. The requirement for additional support may be because of the individual's mobility, medical, or behavioral needs.

(c) HHSC may review an approved enhanced staffing rate at any time to determine if it is appropriate. If HHSC reviews an enhanced staffing rate, a program provider must submit documentation supporting the enhanced staffing rate to HHSC in accordance with HHSC's request.

(d) HHSC notifies a program provider that an enhanced staffing rate is approved or denied through the HHSC data system.

(e) A program provider may request an administrative hearing in accordance with 1 TAC §357.484 (relating to Request for a Hearing) if HHSC:

(1) denies a request made in accordance with subsection (a) of this section; or

(2) denies an enhanced staffing rate based on a review described in subsection (c) 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 28, 2022.

TRD-202202840

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 438-4639



CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§559.201, 559.203, 559.205, 559.207, 559.209, 559.211, 559.213, 559.215, 559.217, 559.219, 559.221, 559.223, 559.225, 559.227, 559.229, 559.231, 559.233, 559.235, 559.237, 559.239, 559.241, 559.243, 559.245, 559.247, 559.249, and 559.251, in new Subchapter H, Individualized Skills and Socialization Provider Requirements.

BACKGROUND AND PURPOSE

In 2014, the Centers for Medicare & Medicaid Services issued regulations governing the settings in which Medicaid home and community based services are provided. To comply with the regulations, HHSC will replace existing day habilitation services in the Deaf Blind with Multiple Disabilities, Home and Community-based Services, and Texas Home Living Medicaid waiver programs with a new service for individuals with intellectual and developmental disabilities. This new, more integrated service is called individualized skills and socialization.

The purpose of the proposal is to implement a new subcategory of day activity and health services (DAHS) licensure for individualized skills and socialization providers. This ensures individualized skills and socialization providers' compliance without the cost and operational complexity involved in creating a new licensure type.

The proposal is necessary to comply with the 2020-2021 General Appropriations Act, 86th Legislature, Regular Session, 2019 (Article II, Health and Human Services Commission, Rider 21), which requires HHSC to establish the individualized skills and socialization provider as a new provider type to replace traditional day habilitation providers. HHSC proposes licensing those new providers under the current DAHS statute (Chapter 103, Texas Human Resources Code) and establishing a new subchapter of rules specific to these providers within existing DAHS rules.

SECTION-BY-SECTION SUMMARY

Proposed §559.201, Purpose, outlines statutory authority, applicability, and specific exclusions from applicability of the subchapter for DAHS facilities.

Proposed §559.203, Definitions, establishes definitions of terms specific to this subchapter.

Proposed §559.205, Criteria for Licensing, describes the license application process and requirements for applicants.

Proposed §559.207, Increase in Capacity, establishes that a license holder must obtain approval from HHSC and apply for a new license to increase the license holder's capacity.

Proposed §559.209, Renewal Procedures and Qualifications, describes the license renewal process and what qualifies as a complete application.

Proposed §559.211, Change of Ownership and Notice of Changes, outlines the process for change of ownership and describes the actions the license holder and HHSC will take for this process.

Proposed §559.213, Time Periods for Processing Licensing Applications, outlines HHSC's time periods for processing applications for a license and explains exceptions for good cause.

Proposed §559.215, Criteria for Denying a License or Renewal of a License, explains the criteria HHSC will follow regarding the denial of a license and establishes the applicant's right to due process regarding the denial.

Proposed §559.217, Opportunity to Show Compliance, describes the process a license holder may take to show compliance prior to the revocation or suspension of a license by HHSC.

Proposed §559.219, License Fees, establishes the fee for a one-, two-, or three-year license. It also describes the circumstances under which HHSC will charge a late fee, and the cost of the late fee.

Proposed §559.221, Relocation, establishes that a license holder must obtain approval from HHSC and submit a new license application to relocate the operation to a new location.

Proposed §559.223, Voluntary Closure, outlines the process a license holder must follow if they choose to permanently close their operation.

Proposed §559.225, General Requirements, describes the general requirements an individualized skills and socialization provider must follow, including pre-employment screening and rights protection.

Proposed §559.227, Program Requirements, describes the detailed requirements individualized skills and socialization providers must follow in the implementation of their program services. This rule describes the staff qualifications for a director and service providers, staffing requirements, staff responsibilities, requirements for on-site and off-site service provision, initial and ongoing training requirements, medication administration and storage, and accident, injury, and infection control requirements.

Proposed §559.229, Emergency Response Plan, requires individualized skills and socialization providers to develop and implement an emergency response plan that includes the eight core functions of emergency management. It also requires training on the plan and conducting fire and evacuation drills.

Proposed §559.231, Inspections, Surveys, and Visits, describes the process HHSC will follow for initial inspections and complaint investigations. This rule requires HHSC to inspect the individualized skills and socialization provider at least once every two years. This rule also requires the individualized skills and socialization provider to make its records available to HHSC upon request.

Proposed §559.233, Determinations and Actions Pursuant to Inspections, describes the process HHSC will follow after an inspection regarding potential violations and outlines the process the individualized skills and socialization provider will follow to submit a plan of correction or request an informal dispute resolution.

Proposed §559.235, Referrals to the Attorney General, establishes that HHSC may refer an individualized skills and socialization provider to the attorney general who may petition a district court for a temporary restraining order or injunction if HHSC believes that a violation creates an immediate threat to the health and safety of an individual.

Proposed §559.237, Procedures for Inspection of Public Records, describes the process for a requester and HHSC to follow regarding the inspection of public records in the custody of HHSC.

Proposed §559.239, Definitions of Abuse, Neglect, and Exploitation, establishes the definitions of abuse, neglect, and exploitation applicable to an individualized skills and socialization provider.

Proposed §559.241, Reporting Abuse, Neglect, Exploitation, or Critical Incidents, describes the requirements for reporting abuse, neglect, exploitation, or critical incidents to HHSC.

Proposed §559.243, Complaint Investigation, describes the process HHSC will follow regarding complaint investigations and investigations of abuse, neglect, or exploitation.

Proposed §559.245, Confidentiality, establishes that all reports, records, communications, and working papers used or developed by HHSC in an investigation are confidential and may be released only as provided in this section.

Proposed §559.247, Nonemergency Suspension, establishes that HHSC may suspend a license when a violation of the licensure rules threatens to jeopardize the health and safety of individuals. The rule outlines the process HHSC will follow and describes the individualized skills and socialization provider's due process.

Proposed §559.249, Revocation, establishes that HHSC may revoke a license under specific circumstances and outlines the individualized skills and socialization provider's due process.

Proposed §559.251, Emergency Suspension and Closing Order, establishes HHSC's ability to suspend a license or order an immediate closing of an operation under specific circumstances and outlines the individualized skills and socialization provider's due process.

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, there will be an estimated additional cost and an increase in revenue to state government as a result of enforcing and administering the rules as proposed.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$1,700,000 in fiscal year (FY) 2023, \$1,700,000 in FY 2024, \$1,700,000 in FY 2025, \$1,700,000 in FY 2026, and \$1,700,000 in FY 2027, and an increase in revenue of \$60,000 in FY 2023, \$20,000 in FY 2024, \$20,000 in FY 2025, \$20,000 in FY 2026, and \$20,000 in FY 2027.

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 create new HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) HHSC has insufficient information to determine the proposed rules' effect on 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.

HHSC has no basis for an expectation of whether there will be an adverse economic effect on small businesses, micro-businesses, or rural communities. There are currently no individualized skills and socialization providers licensed.

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 receive a source of federal funds or comply with federal law.

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 benefit will be improved oversight of day activity and community integration services for individuals with intellectual disabilities who receive Home and Community-based, Texas Home Living, and Deaf Blind and Multiple Disability waiver services. Another anticipated public benefit is reduced cost to implement the new service by using existing state resources such as existing licensing systems and new and existing rules, enforcement processes, and complaint intake and resolution systems to license individualized skills and socialization providers under the DAHS license.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require the payment of \$75 for a three-year license fee, \$50 for a two-year license fee, or \$25 for a one-year license fee.

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 Long-term Care Regulation Policy and Rules, Mail Code E-370, 701 W. 51st Street, Austin, Texas 78751, or by email to HH-SCLTCRRules@hhs.texas.gov.

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

indicate "Comments on Proposed Rule 22R050" in the subject line.

SUBCHAPTER H. INDIVIDUALIZED SKILLS AND SOCIALIZATION PROVIDER REQUIREMENTS

DIVISION 1. INTRODUCTION

26 TAC §559.201, §559.203

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Chapter 103 and adopt rules for licensing and setting standards for facilities licensed under Chapter 103.

The new sections affect Texas Government Code §§531.0055, 531.021, and 531.033, Texas Human Resources Code §32.021, and Texas Human Resources Code, Chapter 103.

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Chapter 103 and adopt rules for licensing and setting standards for facilities licensed under Chapter 103.

The new sections affect Texas Government Code §§531.0055, 531.021, and 531.033, Texas Human Resources Code §32.021, and Texas Human Resources Code, Chapter 103.

§559.201. Purpose.

(a) The purpose of this subchapter is to establish licensing procedures, standards, and requirements for an individualized skills and socialization provider licensed as a Day Activity and Health Services (DAHS) facility in accordance with Texas Human Resources Code Chapter 103.

(b) This subchapter applies to an individualized skills and socialization provider and the provision of on-site and off-site individualized skills and socialization services.

(c) This subchapter does not apply to:

(1) a DAHS facility providing services in the DAHS program; or

(2) the provision of in-home individualized skills and socialization in the Home and Community-based Services and Texas Home Living waiver programs.

§559.203. Definitions.

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

(1) Community setting--A setting accessible to the general public within an individual's community.

(2) Critical incident--An event reportable to the Texas Health and Human Services (HHSC) Complaint and Incident Intake section in accordance with this subchapter.

(3) Day Activity and Health Services (DAHS) directory--A public list generated and maintained by the HHSC, listing all DAHS providers, including individualized skills and socialization providers.

(4) Deaf Blind with Multiple Disabilities (DBMD) program--A waiver program operated by HHSC, as authorized by the Centers for Medicare & Medicaid Services (CMS) in accordance with §1915(c) of the Social Security Act.

(5) Home and Community-based Services (HCS) program--A waiver program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(6) Implementation plan--In the HCS and TxHmL programs, a written document developed by a program provider outlining outcomes and objectives for each program service on the individual's IPC to be provided by the program provider.

(7) Individual--A person who applies for or is receiving services from an individualized skills and socialization provider.

(8) Individual plan of care (IPC)--A written plan authorized by HHSC that states the type and amount of each DBMD, TxHmL, or HCS program service to be provided to the individual during an IPC year.

(9) Individual program plan (IPP)--In the DBMD program, a written plan documented on an HHSC form and completed by an individual's case manager that describes the goals and outcomes for each DBMD program service and Community First Choice (CFC) service, other than CFC support management, included on the individual's IPC.

(10) Individualized skills and socialization--A DBMD, TxHmL, or HCS program service described in §260.503 of this title (relating to Description of Individualized Skills and Socialization), §262.905 of this title (relating to Description of On-Site and Off-Site Individualized Skills and Socialization), and §263.2005 of this title (relating to Description of On-Site and Off-Site Individualized Skills and Socialization). The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(11) Individualized skills and socialization provider--A provider licensed as a DAHS provider by HHSC to provide individualized skills and socialization services. A provider of individualized skills and socialization services is considered an individualized skills and socialization provider once licensed.

(12) Legally authorized representative (LAR)--A person authorized by law to act on behalf of another person with regard to a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee

appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(13) License holder--A person who holds a license as an individualized skills and socialization provider.

(14) On-site individualized skills and socialization location--The building or a portion of a building that is owned or leased by an individualized skills and socialization provider where on-site individualized skills and socialization is provided.

(15) Online licensure portal--The Texas Unified Licensure Information Portal (TULIP) system. TULIP is the online system for submitting long-term care licensure applications.

(16) Person-directed plan (PDP)--In the HCS and the TxHmL programs, a written plan, based on person-directed planning and developed with an applicant or individual using the HHSC person-directed plan form and discovery tool found on the HHSC website, that describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensures the applicant's or individual's health and safety.

(17) Program provider--A person, as defined in Texas Administrative Code, Title 40, §49.102 (relating to Definitions), that has a contract with HHSC to provide DBMD, TxHmL, or HCS program services, excluding a financial management services agency.

(18) Service provider--A person, who may be an employee or contractor of an individualized skills and socialization provider, who directly provides individualized skills and socialization services to an individual.

(19) Texas Home Living (TxHmL) program--A waiver program operated by HHSC and approved by CMS in accordance with §1915(c) of the Social Security Act.

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 28, 2022.

TRD-202202835

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 11, 2022

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



DIVISION 2. LICENSING

26 TAC §§559.205, 559.207, 559.209, 559.211, 559.213, 559.215, 559.217, 559.219, 559.221, 559.223

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making

authority; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Chapter 103 and adopt rules for licensing and setting standards for facilities licensed under Chapter 103.

The new sections affect Texas Government Code §§531.0055, 531.021, and 531.033, Texas Human Resources Code §32.021, and Texas Human Resources Code, Chapter 103.

§559.205. Criteria for Licensure.

(a) An entity may not establish or provide individualized skills and socialization services in Texas without a license issued by the Texas Health and Human Services Commission (HHSC) in accordance with Texas Human Resources Code, Chapter 103, and this subchapter.

(b) An individualized skills and socialization provider must be listed on HHSC's Day Activity and Health Services (DAHS) directory as an individualized skills and socialization provider in order to provide individualized skills and socialization services.

(c) An applicant for a license must submit a complete application form, follow the application instructions, electronically upload required documentation, and submit the required license fee to HHSC through the online licensure portal.

(d) An applicant for a license must complete the HHSC required training to become an individualized skills and socialization provider and provide documentation that required training is complete through the application in the online licensure portal.

(e) An applicant for a license must submit to HHSC as part of the application the:

- (1) name of the business entity to be licensed;
- (2) tax identification number;
- (3) name of the chief executive officer (CEO) or equivalent person;
- (4) ownership information;
- (5) address of on-site individualized skills and socialization location;
- (6) name of program providers using this entity for individualized skills and socialization services, if any;
- (7) maximum number of individuals who can receive individualized skills and socialization at this location, which will become the licensed capacity when approved;
- (8) effective date the entity will be available to provide individualized skills and socialization services; and
- (9) any other information required by the online application instructions.

(f) An applicant for a license must affirmatively demonstrate that the applicant meets the requirements for operation based on an on-site survey.

(g) HHSC may deny an application that remains incomplete after 120 days.

(h) Before issuing a license, HHSC considers the background and qualifications of:

- (1) the applicant or license holder;
- (2) a person with a disclosable interest;

- (3) an affiliate of the applicant or license holder;
- (4) a director;
- (5) a manager; and
- (6) any other person disclosed on the submitted application as defined by the application instructions.

(i) HHSC issues a license if it finds that the applicant or license holder, all persons described in subsection (h) of this section, and the on-site individualized skills and socialization location meet all requirements of this subchapter.

(j) An individualized skills and socialization provider must not provide services to more individuals than the number of individuals specified on its license.

(k) An individualized skills and socialization provider must prominently and conspicuously post its license for display in a public area of the on-site individualized skills and socialization location that is readily accessible to individuals, employees, and visitors. For an individualized skills and socialization provider that only provides off-site services, the license must be displayed in a conspicuous place in the designated place of business.

(l) If any information submitted through the application process changes following licensure, the license holder must submit an application through the online licensure portal to make the changes.

§559.207. Increase in Capacity.

(a) During the license term, a license holder may not increase capacity without approval from the Texas Health and Human Services Commission (HHSC). The license holder must submit to HHSC a complete application for increase in capacity through the online licensure portal.

(b) Upon approval of an increase in capacity, HHSC will issue a new license.

§559.209. Renewal Procedures and Qualifications.

(a) A license issued under this chapter:

- (1) must be renewed before the license expiration date; and
- (2) is not automatically renewed.

(b) The Texas Health and Human Services Commission (HHSC) will implement a system under which licenses issued under this subchapter expire on staggered dates. For the initial nine-month application period, applicants may receive:

- (1) a one-year license;
- (2) a two-year license; or
- (3) a three-year license.

(c) All licenses issued under this subchapter, after the initial nine-month application period, are valid for three years.

(d) The submission of a license fee alone does not constitute an application for renewal.

(e) To renew a license, a license holder must submit an application for renewal to HHSC through the online licensure portal no later than the 45th day before the expiration date of the current license. HHSC considers that an application for renewal has met the submission deadline if the license holder:

(1) submits a complete application to HHSC, and HHSC receives that complete application no later than the 45th day before the expiration date of the current license;

(2) submits an incomplete application to HHSC with a letter explaining the circumstances that prevented the inclusion of the missing information, and HHSC receives the incomplete application and letter no later than the 45th day before the expiration date of the current license; or

(3) submits a complete application or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information to HHSC, HHSC receives the application during the 45-day period ending on the date the current license expires, and the license holder pays a late fee in accordance with §559.219(c) of this subchapter (relating to License Fees) in addition to the license renewal fee.

(f) For purposes of Texas Government Code §2001.054, HHSC considers that a person has submitted a timely and sufficient application for the renewal of a license if the license holder's application has met the submission deadlines in subsection (e) of this section, including submission of the required fee. Failure to submit a timely and sufficient application will result in the expiration of the license on the expiration date listed on the license.

(g) An application for renewal submitted after the expiration date of the license is considered to be an application for an initial license and must comply with the requirements for an initial license in §559.205 of this subchapter (relating to Criteria for Licensing).

(h) The application for renewal must contain the same information required for an original application and the license fee as described in §559.219 of this subchapter.

(i) The renewal of a license may be denied for the same reasons an original application for a license may be denied as described in §559.215 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

§559.211. Change of Ownership and Notice of Changes.

(a) For the purposes of this section, a temporary change of ownership license is a temporary license issued to an applicant who proposes to become the license holder of a current individualized skills and socialization provider that exists on the date the application is submitted.

(b) A license holder may not transfer its license. The applicant (new license holder) must obtain a temporary change of ownership license followed by an initial three-year license in accordance with this section. When the Texas Health and Human Services Commission (HHSC) approves the change of ownership by issuing a temporary change of ownership license to the new license holder, the current license holder's license becomes invalid as of the effective date of the change of ownership indicated in the change of ownership application. Between the effective date of the change of ownership and the issuance of the temporary change of ownership license, the existing license holder remains responsible under its license; however, the applicant may operate as the individualized skills and socialization provider on behalf of the current license holder during such time period.

(c) The applicant must submit to HHSC through the online licensure portal:

(1) a complete application for a license in accordance with HHSC instructions and §559.205 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §559.219 of this subchapter (relating to License Fees); and

(3) a signed and notarized Change of Ownership Transfer Affidavit HHSC Form 1092 from the applicant and the individual-

ized skills and socialization provider's current license holder of intent to transfer the individualized skills and socialization provider operation from the current license holder to the applicant, beginning on the change of ownership effective date specified on the change of ownership application.

(d) To avoid an individualized skills and socialization provider operating without a license, an applicant must submit all items required by subsection (c) of this section at least 30 days before the anticipated date of a change of ownership, unless the 30-day notice requirement is waived in accordance with subsection (e) of this section.

(e) HHSC may waive the 30-day notice required in subsection (d) of this section if HHSC determines that the applicant presents evidence showing that circumstances prevented the submission of the items in subsection (c) of this section at least 30 days before the anticipated change of ownership and that not waiving the 30-day requirement would create a threat to the health and safety of an individual.

(f) Upon HHSC approval of the items specified in subsection (c) of this section, HHSC issues a temporary change of ownership license to the applicant if HHSC finds that the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements in §559.205 of this subchapter and §559.215 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

(1) The issuance of a temporary change of ownership license constitutes HHSC's official written notice to the individualized skills and socialization provider of the approval of the application for a change of ownership.

(2) The effective date of the temporary change of ownership license is the date requested in the application and cannot precede the date the application is received by HHSC through the online licensure portal.

(g) A temporary change of ownership license expires on the earlier of:

(1) 90 days after its effective date or the last day of any extension HHSC provides in accordance with subsection (h) of this section; or

(2) the date HHSC issues a three-year license in accordance with subsection (k) of this section.

(h) HHSC, in its sole discretion, may extend a temporary change of ownership license for a term of 90 days at a time based upon extenuating circumstances.

(i) HHSC conducts an on-site inspection to verify compliance with the licensure requirements after issuing a temporary change of ownership license. HHSC may conduct a desk review instead of an on-site inspection after issuing a temporary change of ownership if:

(1) less than 50 percent of the direct or indirect ownership interest of the former license holder changed, when compared to the new license holder; or

(2) every person with a disclosable interest in the new license holder had a disclosable interest in the former license holder.

(j) HHSC, in its sole discretion, may conduct an on-site inspection after issuing a temporary change of ownership license.

(k) If the applicant, all controlling persons, and all persons disclosed in the application satisfy all applicable requirements of §559.205 and §559.215 of this subchapter for a license, and the individualized skills and socialization provider passes the change of ownership inspection as described in subsection (i) of this section, HHSC issues a

three-year license. The effective date of the three-year license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by HHSC through the online licensure portal.

(l) If a license holder adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC of the addition no later than 30 days after the addition of the owner.

(m) If a license holder changes its name but does not undergo a change of ownership, the license holder must notify HHSC and submit documentation evidencing a legal name change by submitting an application through the online licensure portal. On receipt of the notice and documentation, HHSC reissues the current license in the license holder's new name.

§559.213. Time Periods for Processing Licensing Applications.

(a) The Texas Health and Human Services Commission (HHSC) will process only applications received within 60 days before the requested date of the issuance of the license.

(b) An application is complete when all requirements for licensing have been met, including compliance with standards and payment of the licensing fee. If an inspection for compliance is required, the application is not complete until the inspection has occurred, reports have been reviewed, and the applicant complies with the standards.

(c) HHSC will notify applicants within 30 days after receipt of the application if any of the following applications are incomplete:

- (1) initial application;
- (2) change of ownership;
- (3) renewal; and
- (4) increase in capacity.

(d) Except as provided in the following sentence, a license will be issued or denied within 30 days after the receipt of a complete application or within 30 days before the expiration date of the license. However, HHSC may delay an action on an application for renewal of a license for up to six months if the individualized skills and socialization provider is subject to a proposed or pending licensure termination action on or within 30 days before the expiration date of the license. The issuance of the license constitutes HHSC's official written notice to the individualized skills and socialization provider of the acceptance and filing of the application.

(e) In the event the application is not processed in the time periods stated in this section, the applicant has a right to request of HHSC full reimbursement of all filing fees paid in that particular application process. If HHSC does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(f) Good cause for HHSC exceeding the period established is considered to exist if:

- (1) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;
- (2) another public or private entity used in the application process caused the delay; or
- (3) other conditions existed giving good cause for exceeding the established periods.

(g) If the request for full reimbursement is denied, the applicant may appeal to HHSC for resolution of the dispute. The applicant

must send a statement to HHSC describing the request for reimbursement and the reasons for it. HHSC makes a decision concerning the appeal and notifies the applicant of the decision.

§559.215. Criteria for Denying a License or Renewal of a License.

(a) The Texas Health and Human Services Commission (HHSC) may deny an initial license or renewal of a license if any person described in §559.205(h) of this subchapter (relating to Criteria for Licensing):

(1) 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;

(2) substantially fails to comply with the requirements described in §559.225 of this subchapter (relating to General Requirements) and §559.227 of this subchapter (relating to Program Requirements), including:

(A) noncompliance that poses a serious threat to health and safety; or

(B) a failure to maintain compliance on a continuous basis;

(3) aids, abets, or permits a substantial violation described in paragraph (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) knowingly provides the following false or fraudulent information:

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

(B) uses subterfuge or other evasive means of filing;

(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; or

(E) is responsible for fraud;

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

(A) licensing fees as described in §559.219 of this subchapter (relating to License Fees); and

(B) franchise taxes, if applicable;

(7) has a history of any of the following actions during the five-year period preceding the date of the application:

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

(B) federal or state Medicare or Medicaid sanctions or penalties;

(C) unsatisfied final judgments;

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

(E) suspension of a license to operate a health facility, long-term care facility, or a similar facility in any state.

(b) Concerning subsection (a)(7) of this section, HHSC may consider exculpatory information provided by any person described in

§559.205(h) of this subchapter and grant a license if HHSC finds that person able to comply with the rules in this chapter.

(c) HHSC does not issue a license to an applicant if the applicant has a history of any of the following actions during the five-year period preceding the date of the application:

(1) revocation of a license to operate a health care facility, long-term care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court injunction prohibiting any person described in §559.205(h) of this subchapter from operating a facility.

(d) Only final actions are considered for purposes of subsections (a)(7) and (c) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(e) If an applicant owns multiple facilities, the overall record of compliance in all facilities will be examined. An overall record poor enough to deny issuance of a new license will not preclude the renewal of licenses of individual facilities with satisfactory records.

(f) If HHSC denies a license or refuses to issue a renewal of a license, the applicant or license holder may request a hearing by following HHSC's rules in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). An administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and 1 TAC Chapter 357, Subchapter I.

§559.217. Opportunity to Show Compliance.

(a) Before the institution of proceedings to revoke or suspend a license or deny an application for the renewal of a license, the Texas Health and Human Services Commission (HHSC) gives the license holder:

(1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license by sending HHSC a written request for an opportunity to show compliance. The request must:

(A) be postmarked within 10 days after the date of HHSC's notice and be received by HHSC within 10 days after the date of the postmark; and

(B) contain specific documentation refuting HHSC's allegations.

(b) HHSC's review will be limited to a review of documentation submitted by the license holder and information used by HHSC as the basis for its proposed action and will not be conducted as an adversary hearing. HHSC will give the license holder a written affirmation or reversal of the proposed action.

§559.219. License Fees.

(a) The license fee is \$75 for a three-year license. The license fee for a license issued in accordance with §559.209(b) of this subchapter (relating to Renewal Procedures and Qualifications) is:

(1) \$25 for a one-year license;

(2) \$50 for a two-year license; and

(3) \$75 for a three-year license.

(b) The fee must be paid with each initial application, change of ownership application, and application for renewal of the license.

A license holder or applicant must pay fees as defined in the online licensure portal.

(c) An applicant for license renewal that submits an application during the 45-day period ending on the date the current license expires must pay a late fee of \$25 in addition to the license fee described in subsection (a) of this section.

§559.221. Relocation.

(a) A license holder must not relocate to another on-site individualized skills and socialization location without approval from the Texas Health and Human Services Commission (HHSC). The license holder must submit a complete application and the fee required under §559.219 of this subchapter (relating to License Fees) to HHSC before the relocation.

(b) The effective date of this license will be the date HHSC approves the relocation.

(c) The license holder must continue to maintain the license at the current on-site individualized skills and socialization location and must continue to meet all requirements for operation until the date of the relocation.

§559.223. Voluntary Closure.

An individualized skills and socialization provider must notify the Texas Health and Human Services Commission in writing within five days before the permanent closure of operation. The individualized skills and socialization provider must include in the written notice the date of permanent closure, reason for closing, location of individual records (active and inactive), and name and address of the individual record custodian.

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

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



DIVISION 3. PROVIDER REQUIREMENTS

26 TAC §§559.225, 559.227, 559.229

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt

rules for implementing Chapter 103 and adopt rules for licensing and setting standards for facilities licensed under Chapter 103.

The new sections affect Texas Government Code §§531.0055, 531.021, and 531.033, Texas Human Resources Code §32.021, and Texas Human Resources Code, Chapter 103.

§559.225. General Requirements.

(a) An individualized skills and socialization provider must:

(1) comply with the provisions of Texas Health and Safety Code (HSC), Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses);

(2) before offering employment, search the employee misconduct registry (EMR) established under HSC §253.007 and the Texas Health and Human Services Commission (HHSC) nurse aide registry (NAR) to determine if a person is designated in either registry as unemployable; both registries can be accessed on the HHSC website; and

(A) an individualized skills and socialization provider must not employ a person who is listed as unemployable in either registry;

(B) an individualized skills and socialization provider must provide information about the EMR to an employee in accordance with 26 TAC §561.3 (relating to Employment and Registry Information); and

(C) in addition to the initial search of the EMR and NAR, an individualized skills and socialization provider must:

(i) conduct a search of the NAR and EMR to determine if the employee is designated in either registry as unemployable at least every 12 months; and

(ii) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file;

(3) comply with all relevant federal and state standards; and

(4) comply with all applicable provisions of the Texas Human Resource Code (HRC), Chapter 102 (relating to Rights of the Elderly).

(b) An individualized skills and socialization provider must:

(1) provide an individual who is 55 years of age and older with a written list of the individual's rights, as outlined under HRC §102.004; and

(2) protect and promote the rights of the individual.

(c) An individualized skills and socialization provider must:

(1) report abuse, neglect, exploitation, and critical incidents in accordance with §559.241 of this subchapter (relating to Reporting Abuse, Neglect, Exploitation, or Critical Incidents);

(2) maintain incident reports;

(3) ensure the confidentiality of individual records and other information related to individuals; and

(4) inform the individual orally and in writing of the individual's rights, responsibilities, and grievance procedures in a language the individual understands.

(d) An individualized skills and socialization provider must prominently and conspicuously post for display in a public area of the

on-site individualized skills and socialization location that is readily available to individuals, employees, and visitors:

- (1) the license issued under this chapter;
- (2) a sign prescribed by HHSC that describes complaint procedures and specifies how complaints may be filed with HHSC;
- (3) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the on-site individualized skills and socialization location for public inspection and providing HHSC's toll-free telephone number that may be used to obtain information concerning the individualized skills and socialization provider;
- (4) a copy of the most recent inspection report relating to the individualized skills and socialization provider;
- (5) a brochure or letter that outlines the individualized skills and socialization provider's hours of operation, holidays, and a description of activities offered; and
- (6) emergency telephone numbers, including the abuse hot-line telephone number, near all telephones.

§559.227. Program Requirements.

(a) Staff qualifications.

(1) An individualized skills and socialization provider must:

- (A) employ a director;
- (B) ensure the director meets the requirements outlined in paragraph (2) of this subsection; and
- (C) have a policy regarding the delegation of responsibility in the director's absence.

(2) A service provider of individualized skills and socialization must be at least 18 years of age and:

- (A) have a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or
- (B) have documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:
 - (i) a written competency-based assessment of the ability to document service delivery and observations of the individuals receiving services; and
 - (ii) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals receiving services.

(3) A service provider of individualized skills and socialization who provides transportation must:

- (A) have a valid driver's license; and
- (B) transport individuals in a vehicle insured in accordance with state law.

(b) Staffing. An individualized skills and socialization provider must ensure that:

- (1) an individual whose needs cannot be met by the individualized skills and socialization provider is not admitted or retained;
- (2) the ratio of service providers to individuals is maintained in accordance with §260.507 of this title (relating to Staffing Ratios), §262.917 of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), and §263.2017 of this title (re-

lating to Staffing Ratios for Off-Site Individualized Skills and Socialization), during the provision of off-site individualized skills and socialization, including during transportation; and

(3) sufficient staff are on duty at all times to ensure:

- (A) the health and safety of the individuals;
- (B) supervision is provided in accordance with the needs of an individual; and
- (C) individualized skills and socialization are provided in accordance with an individual's individual plan of care (IPC), individual program plan (IPP), person-directed plan (PDP), and implementation plan, as applicable.

(c) Staff responsibilities.

(1) The director:

- (A) manages the individualized skills and socialization services and the on-site individualized skills and socialization location;
- (B) trains and supervises staff; and
- (C) maintains all records.

(2) A service provider:

- (A) delivers individualized skills and socialization services;
- (B) assists with recreational activities; and
- (C) provides protective supervision through observation and monitoring.

(d) An individualized skills and socialization provider must make both on-site and off-site individualized skills and socialization available to an individual.

(e) An individualized skills and socialization provider must ensure that on-site individualized skills and socialization:

- (1) is provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider; and
- (2) is not provided in:
 - (A) a prohibited residential setting for an individual, unless provided in an event open to the public; or
 - (B) the residence of an individual or another person.

(f) An individualized skills and socialization provider must ensure that off-site individualized skills and socialization:

- (1) are provided in a community setting chosen by the individual from among available community setting options;
- (2) includes transportation necessary for the individual's participation in off-site individualized skills and socialization; and
- (3) is not provided in:
 - (A) a building in which on-site individualized skills and socialization are provided;
 - (B) a prohibited residential setting for an individual, unless provided in an event open to the public; or
 - (C) the residence of an individual or another person.

(g) An individualized skills and socialization provider must provide individualized skills and socialization:

(1) in the Deaf Blind with Multiple Disabilities (DBMD) program, in accordance with an individual's individual plan of care (IPC) and individual program plan (IPP); and

(2) in the Texas Home Living (TxHmL) program and Home and Community-based Services (HCS) program, in accordance with an individual's person-directed plan (PDP), IPC, and implementation plan.

(h) An individualized skills and socialization provider must not require an individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization.

(i) If an individual does not want to participate in an activity the individual scheduled for on-site individualized skills and socialization or off-site individualized skills and socialization, or the legally authorized representative (LAR) does not want the individual to participate in such activity, the individualized skills and socialization provider must document the decision not to participate in the individual's record.

(j) Training.

(1) Initial training.

(A) An individualized skills and socialization provider must:

(i) provide service providers with training on their responsibilities under the emergency response plan developed in accordance with §559.229 of this subchapter (relating to Emergency Response Plan) within three workdays after the start of employment and document the training in the individualized skills and socialization provider's records; and

(ii) provide service providers a minimum of eight hours of training during the first three months after the start of employment and document the training in the records of the individualized skills and socialization provider.

(B) The training provided in accordance with subparagraph (A)(ii) of this paragraph must include:

(i) any nationally or locally recognized adult CPR course or certification;

(ii) first aid;

(iii) orientation to health care delivery, including the following topics:

(I) safe body function and mechanics;

(II) personal care techniques and procedures;

and

(III) overview of the population served by the individualized skills and socialization provider; and

(iv) identification and reporting of abuse, neglect, or exploitation.

(2) Ongoing training.

(A) An individualized skills and socialization provider must:

(i) provide at least eight hours of ongoing training to service providers annually;

(ii) ensure that service providers maintain current certification in CPR.

(B) The training provided in accordance with subparagraph (A)(i) of this paragraph must include:

(i) training on responsibilities under the emergency response plan developed in accordance with §559.229;

(ii) training on infection control policies and procedures developed in accordance with subsection (m) of this section; and

(iii) identification and reporting of abuse, neglect, or exploitation.

(k) Medications.

(1) Administration.

(A) If an individual cannot or chooses not to self-administer his or her medications, an individualized skills and socialization provider must ensure the individual's medications are administered by a person who holds a current license under state law authorizing the licensee to do so.

(B) An individualized skills and socialization provider must record an individual's medications, including over-the-counter medications, on the individual's medication profile record. The recorded information must be obtained from the prescription label and must include the medication name, strength, dosage, doses received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) General.

(A) An individualized skills and socialization provider must immediately report to an individual's program provider any unusual reactions to a medication or treatment.

(B) When an individualized skills and socialization provider supervises or administers medications, the individualized skills and socialization provider must document in writing if an individual does not receive or take the medication and treatment as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed.

(3) Storage.

(A) An individualized skills and socialization provider must provide a locked area for all medications, which may include:

(i) a central storage area; or

(ii) a medication cart.

(B) An individualized skills and socialization provider must store an individual's medication separately from other individuals' medications within the storage area.

(C) An individualized skills and socialization provider must store medication requiring refrigeration in a locked refrigerator that is used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator.

(D) An individualized skills and socialization provider must store poisonous substances and medications labeled for "external use only" separately within the locked area.

(E) An individualized skills and socialization provider must store drugs covered by Schedule II of the Controlled Substances Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(l) Accident, injury, or acute illness.

(1) An individualized skills and socialization provider must stock and maintain in a single location in the on-site individualized skills and socialization location first aid supplies to treat burns, cuts, and poisoning. An individualized skills and socialization

provider that only delivers off-site individualized skills and socialization must ensure these first aid supplies are immediately available at all times during service provision.

(2) In the event of accident or injury to an individual requiring emergency care, or in the event of death of an individual, an individualized skills and socialization provider must:

(A) arrange for emergency care or transfer to an appropriate place for treatment, including:

(i) a physician's office;

(ii) a clinic; or

(iii) a hospital;

(B) immediately notify an individual's program provider with which the individualized skills and socialization provider contracts to provide services to the individual; and

(C) describe and document the accident, injury, or illness on a separate report containing a statement of final disposition and maintain the report on file.

(m) An individualized skills and socialization provider must create and enforce written policies and procedures for infection control, including spread of disease to ensure staff compliance with state law, the Occupational Safety and Health Administration, and the Centers for Disease Control and Prevention.

§559.229. Emergency Response Plan.

(a) Definitions. In this section:

(1) "emergency situation" means an impending or actual situation that:

(A) interferes with normal activities of an individualized skills and socialization provider or the individuals receiving services from the individualized skills and socialization provider;

(B) may:

(i) cause injury or death to an individual or staff member of the individualized skills and socialization provider; or

(ii) cause damage to property of the individualized skills and socialization provider;

(C) requires the individualized skills and socialization provider to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) does not include a situation that arises from the medical condition of an individual such as cardiac arrest, obstructed airway, cerebrovascular accident; and

(2) "plan" refers to an individualized skills and socialization provider's emergency response plan.

(b) Administration. An individualized skills and socialization provider must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a written copy of the plan that is accessible to all staff at all times;

(3) evaluate and revise the plan as necessary:

(A) within 30 days after an emergency situation;

(B) at least annually; and

(4) revise the plan within 30 days after information included in the plan changes.

(c) Emergency response plan. An individualized skills and socialization provider's plan must:

(1) include a risk assessment of all potential internal and external emergency situations relevant to the individualized skills and socialization provider's operations and geographical area, such as a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the services and assistance needed by the individuals in an emergency situation;

(3) include a section for each core function of emergency management, as described in subsection (d) of this section, that is based on an individualized skills and socialization provider's decision to either shelter-in-place or evacuate during an emergency; and

(4) for the on-site individualized skills and socialization location, include a fire safety plan that complies with subsection (e) of this section.

(d) Plan requirements regarding eight core functions of emergency management.

(1) Direction and control. An individualized skills and socialization provider's plan must contain a section for direction and control that:

(A) designates by name or title the emergency preparedness coordinator (EPC) who is the staff person with the authority to manage the individualized skills and socialization provider's response to an emergency situation in accordance with the plan;

(B) designates by name or title the alternate EPC who is the staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity;

(C) documents the name and contact information for the local emergency management coordinator (EMC) for the area where the individualized skills and socialization provider is located, as identified by the office of the local mayor or county judge; and

(D) documents coordination with the local EMC as required by the local EMC's guidelines relating to emergency situations.

(2) Warning. An individualized skills and socialization provider's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. An individualized skills and socialization provider's plan must contain a section for communication that:

(A) identifies the individualized skills and socialization provider's primary mode of communication and alternate mode of communication to be used in the event of power failure or the loss of the individualized skills and socialization provider's primary mode of communication in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for individuals and their program providers;

(C) includes procedures for maintaining a current list of telephone numbers for the individualized skills and socialization provider's staff that also identifies the EPC;

(D) identifies the location of the lists described in subparagraphs (B) and (C) of this paragraph where individualized skills and socialization provider staff can obtain the list quickly;

(E) includes procedures to notify:

(i) staff about an emergency situation;

(ii) a receiving facility, if applicable, about an impending or actual evacuation of individuals; and

(iii) individuals, LARs, and other persons about an emergency situation;

(F) describes how the individualized skills and socialization provider will provide, during an emergency situation, general information to the public, such as the change in location and hours, or that the individualized skills and socialization provider is closed due to the emergency situation;

(G) includes procedures for the individualized skills and socialization provider to maintain communication with:

(i) staff during an emergency situation;

(ii) a receiving facility, if applicable; and

(iii) staff who will transport individuals to a secure location during an evacuation in a vehicle;

(H) includes procedures for reporting to the Texas Health and Human Services Commission (HHSC) an emergency situation that caused the death or serious injury of an individual as follows:

(i) by telephone, at 1-800-458-9858, within 24 hours after the death or serious injury; and

(ii) within five working days after making a report described by clause (i) of this subparagraph, the individualized skills and socialization provider must ensure an investigation of the incident is conducted and send a written investigation report on Form 3613-A, Provider Investigation Report, or a form containing, at a minimum, the information required by Form 3613-A, to HHSC's Complaint and Incident Intake.

(4) Sheltering-in-place. An individualized skills and socialization provider that provides on-site services must include in the plan a section that includes procedures to shelter individuals in place during an emergency situation.

(5) Evacuation. An individualized skills and socialization provider that provides on-site services must include in the plan a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the on-site individualized skills and socialization location, except in small, one-story buildings where all exits are obvious;

(B) includes procedures for evacuating individuals to a pre-arranged location in an emergency situation, if applicable;

(C) includes a mutual aid agreement with a receiving facility that must specify the arrangements for receiving individuals in the event of an evacuation;

(D) identifies primary and alternate evacuation destinations and routes, and includes a map that shows the destination and routes;

(E) includes procedures for:

(i) ensuring staff accompany evacuating individuals;

(ii) ensuring that all persons present in the building have been evacuated;

(iii) accounting for individuals and staff after they have been evacuated;

(iv) accounting for individuals who are absent from the individualized skills and socialization provider at the time of the evacuation;

(v) contacting the local EMC, if required by the local EMC guidelines, to find out if it is safe to return to the geographical area; and

(vi) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the building, if required by the local EMC guidelines;

(G) includes procedures for notifying HHSC by telephone, at 1-800-458-9858, within 24 hours after an evacuation that individuals have been evacuated;

(H) includes procedures for notifying the HHSC Regulatory Services regional office for the area in which the individualized skills and socialization provider is located, by telephone, as soon as safely possible after a decision to evacuate is made; and

(I) includes procedures for notifying the HHSC regional office for the area in which the individualized skills and socialization provider is located, by telephone, that individuals have returned to the building after an evacuation, within 48 hours after their return.

(6) Transportation. An individualized skills and socialization provider that provides on-site services must include in the plan a section with procedures for transportation that will ensure:

(A) safe transport of records, food, water, equipment, and supplies needed during an evacuation; and

(B) that the records, food, water, equipment, and supplies, described in subparagraph (A) of this paragraph, arrive at the receiving facility at the same time as the individuals.

(7) Health and Medical Needs. An individualized skills and socialization provider's plan must contain a section for health and special needs that:

(A) identifies all the individualized skills and socialization provider's individuals with special needs including individuals with conditions requiring assistance during an evacuation; and

(B) ensures the needs of those individuals are met during an emergency.

(8) Resource Management. An individualized skills and socialization provider's plan must contain a section for resource management that:

(A) includes procedures for accessing medications, records, food, water, equipment and supplies needed during an emergency;

(B) identifies staff who are assigned to locate and ensure the transportation of items described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. An individualized skills and socialization provider must:

(1) train all staff when hired on their responsibilities under the plan in accordance with §559.227(j) of this subchapter (relating to Program Requirements); and

(2) retrain staff at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change.

(f) An individualized skills and socialization provider offering on-site services must:

(1) conduct unannounced drills with staff for severe weather and other emergency situations identified by the individualized skills and socialization provider as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section; and

(2) establish procedures to:

(A) perform a fire drill at least once every 90 days with all occupants of the building at expected and unexpected times and under varying conditions;

(B) relocate, during the fire drill, all occupants of the building to a predetermined location where participants must remain until a recall or dismissal signal is given;

(C) complete the HHSC Fire Drill Report Form for each required fire drill;

(D) conduct a monthly fire prevention inspection performed by a trained and senior staff member and document the inspection results;

(E) maintain copies of the fire prevention inspection report, described in subparagraph (D) of this paragraph, that were prepared by the individualized skills and socialization provider within the last 12 months; and

(F) post a copy of the most recent fire prevention inspection report, described in subparagraph (D) of this paragraph, in a conspicuous place in the on-site individualized skills and socialization location.

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

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DIVISION 4. SURVEYS, INVESTIGATIONS, AND ENFORCEMENT

26 TAC §§559.231, 559.233, 559.235, 559.237, 559.239, 559.241, 559.243, 559.245, 559.247, 559.249, 559.251

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rule-making authority; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Chapter 103 and adopt rules for licensing and setting standards for facilities licensed under Chapter 103.

The new sections affect Texas Government Code §§531.0055, 531.021, and 531.033, Texas Human Resources Code §32.021, and Texas Human Resources Code, Chapter 103.

§559.231. Inspections, Surveys, and Visits.

(a) The Texas Health and Human Services Commission (HHSC) may enter the premises of an individualized skills and socialization provider at reasonable times and make an inspection necessary to issue a license or renew a license. HHSC inspection and survey personnel will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits as required for carrying out the responsibilities of licensing.

(b) Generally, all inspections, surveys, complaint investigations, and other visits, whether routine or nonroutine, made for the purpose of determining the appropriateness of care of individuals and day-to-day operations of an individualized skills and socialization provider will be unannounced. Any exceptions must be justified.

(c) HHSC may conduct any inspection, investigation, or survey as a desk review, if appropriate, and at the discretion of HHSC, except for the on-site components of:

(1) an initial inspection; and

(2) a complaint investigation.

(d) Any person may request an inspection of an individualized skills and socialization provider by notifying HHSC in writing of an alleged violation of a licensing requirement. The complaint must be as detailed as possible and signed by the complainant. HHSC performs an on-site inspection as soon as feasible but no later than 30 days after receiving the complaint, unless after an investigation the complaint is found to be frivolous. HHSC will respond to the complainant in writing.

(e) HHSC will receive and investigate anonymous complaints.

(f) The individualized skills and socialization provider must provide all its books, records, and other documents maintained by or on behalf of an individualized skills and socialization provider to HHSC upon request.

(1) HHSC is authorized to photocopy documents, photograph individuals, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that HHSC reasonably believes threatens the health and safety of an individual.

(2) Examples of records and documents that may be requested and photocopied or otherwise reproduced are individual program plans, person-directed plans, and medication records.

(3) Upon request, an individualized skills and socialization provider must provide HHSC with a list of all individuals served by the individualized skills and socialization provider. The list must include the waiver program or funding source used by the individual to receive services from the individualized skills and socialization provider.

(4) The individualized skills and socialization provider may charge HHSC at a rate not to exceed the rate HHSC charges for copies. The procedure of copying is the responsibility of the director or designee. If copying requires that the records be removed from the individualized skills and socialization provider, a representative of the individualized skills and socialization provider is expected to accompany the records and assure their order and preservation.

(5) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.

(g) The source of the complaint is not revealed.

(h) HHSC inspects an individualized skills and socialization provider at least once every two years after the initial inspection.

§559.233. Determinations and Actions Pursuant to Inspections.

(a) The Texas Health and Human Services Commission (HHSC) determines if an individualized skills and socialization provider is in compliance with the licensing rules.

(b) Violations of regulations are listed on forms designed for the purpose of the inspection.

(c) At the conclusion of an inspection or survey, the violations are discussed in an exit conference with the individualized skills and socialization provider's management. A written list of the violations is left with the individualized skills and socialization provider at the time of the exit conference.

(d) If, after the initial exit conference, additional violations are cited, the violations are communicated to the individualized skills and socialization provider within 10 working days after the initial exit conference.

(e) HHSC provides a clear and concise summary in nontechnical language of each licensure inspection and complaint investigation, if applicable. The summary outlines significant violations noted at the time of the inspection or survey, but does not include names of individuals, staff, or any other information that would identify individuals or other prohibited information under general rules of public disclosure. The summary is provided to the individualized skills and socialization provider at the time the report of contact or similar document is provided.

(f) Upon receipt of the final statement of violations, the individualized skills and socialization provider has 10 working days to submit an acceptable plan of correction to the HHSC Regulatory Services regional director. An acceptable plan of correction must address:

(1) how the individualized skills and socialization provider will accomplish the corrective action for those individuals affected by each violation;

(2) how the individualized skills and socialization provider will identify other individuals with the potential to be affected by the same violation;

(3) how the individualized skills and socialization provider will put the corrective measure into practice or make systemic changes to ensure that the violation does not recur;

(4) how the individualized skills and socialization provider will monitor the corrective action to ensure that the violation is corrected and will not recur; and

(5) the date the corrective action will be completed.

(g) If the individualized skills and socialization provider and the inspector cannot resolve a dispute regarding a violation of regulations, the individualized skills and socialization provider is entitled to an informal dispute resolution (IDR) at the regional level for all violations. For a violation that resulted in an adverse action, the individualized skills and socialization provider is entitled to an IDR at either the regional or state office level.

(1) A written request and all supporting documentation must be submitted to the Regional Director, HHSC Long-term Care Regulation, for a regional IDR; or to Regulatory Services, Texas Health and Human Services Commission, P.O. Box 149030, E-351, Austin, Texas 78714-9030, for a central office IDR, no later than the 10th day after receipt of the official statement of violations.

(2) HHSC completes the IDR process no later than the 30th day after receipt of a request from an individualized skills and socialization provider.

(3) Violations deemed invalid in an IDR will be so noted in HHSC's records.

§559.235. Referrals to the Attorney General.

The Texas Health and Human Services Commission (HHSC) may refer an individualized skills and socialization provider to the attorney general who may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting individuals if HHSC reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of an individual; and

(2) an injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting individuals if HHSC reasonably believes that the violation or threatened violation creates a threat to the health and safety of an individual.

§559.237. Procedures for Inspection of Public Records.

(a) Procedures for inspection of public records will be in accordance with the Texas Government Code, Chapter 552, and as further described in this section.

(b) The Texas Health and Human Services Commission (HHSC) Regulatory Services Division is responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria.

(1) The application must be made to HHSC Long-term Care Regulation, Regulatory Services Division, Mail Code E-349, P.O. Box 149030, Austin, Texas 78714-9030;

(2) The requester must identify themselves.

(3) The requester must give reasonable prior notice of the time for inspection or copying of records.

(4) The requester must specify the records requested.

(5) On written applications, if HHSC is unable to ascertain the records being requested, HHSC may return the written application to the requester for clarification.

(6) HHSC will provide the requested records as soon as possible; however, if the records are in active use, or in storage, or time is needed for proper de-identification or preparation of the records for inspection, HHSC will so advise the requester and set an hour and date within a reasonable time when the records will be available.

(d) Original records may be inspected or copied, but in no instance will original records be removed from HHSC offices.

(e) Records maintained by HHSC Regulatory Services Division are open to the public, with the following exceptions.

(1) Incomplete reports, audits, evaluations, and investigations made of, for, or by HHSC are confidential.

(2) All reports, records, and working papers used or developed by HHSC in and investigation of reports of abuse and neglect are confidential and may be released to the public as provided in §559.95 of this chapter (relating to confidentiality).

(3) All names and related personal, medical, or other identifying information about an individual are confidential.

(4) Information about any identifiable person that is defamatory or an invasion of privacy is confidential.

(5) Information identifying complainants or informants is confidential.

(6) Itineraries of surveys and inspections are confidential.

(7) Other information that is excepted from release by Texas Government Code, Chapter 552, is not available to the public.

(8) To implement this subsection, HHSC may not alter or de-identify original records. Instead, HHSC will make available for public review or release only a properly de-identified copy of the original record.

(f) HHSC will charge for copies of records upon request.

(1) If the requester simply wants to inspect records, the requester will specify the records to be inspected. HHSC will make no charge for this service, unless HHSC determines a charge is appropriate based on the nature of the request.

(2) If the requester wants copies of a record, the requester will specify in writing the records to be copied on an appropriate HHSC form, and HHSC will complete the form by specifying the cost of the records, which the requester must pay in advance. Checks and other instruments of payment must be made payable to the Texas Health and Human Services Commission.

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requester on a cost basis in accordance with costs established by the Office of the Attorney General or HHSC for office machine copies.

(4) For documents that are mailed, HHSC will charge for the postage at the time it charges for the production. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one long-term care facility, each facility will be considered a separate request.

§559.239. Definitions of Abuse, Neglect, and Exploitation.

For purposes of this subchapter, the definitions of abuse, neglect, and exploitation are those found in Chapter 48, Texas Human Resources Code, and §559.2 of this chapter (relating to Definitions).

§559.241. Reporting Abuse, Neglect, Exploitation, or Critical Incidents.

(a) Any individualized skills and socialization provider staff who has reasonable cause to believe that an individual is in a state of abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to the Texas Health and Human Services (HHSC) Complaint and Incident Intake Section at 1-800-458-9858 within one hour after suspecting or learning of the alleged abuse, neglect, or exploitation.

(b) In addition to the reporting requirements described in subsection (a) of this section, an individualized skills and socialization provider must report any of the following incidents to the HHSC Complaint and Incident Intake Section at 1-800-458-9858 within one hour after suspecting or learning of the incident, including:

(1) sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual;

(2) sexual activity involving an individual less than 18 years of age;

(3) the pregnancy of an individual;

(4) individual-to-individual aggression that results in serious physical injury;

(5) the death of an individual; and

(6) an individual whose location has been unknown by the individualized skills and socialization provider for more than eight hours or less than eight hours if there are circumstances that place the individual's health or safety at risk.

(c) The following information must be reported to HHSC when making a report described in subsections (a) or (b) of this section:

(1) name, age, and address of the individual;

(2) name and address of the person responsible for the care of the individual, if available;

(3) nature and extent of the individual's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(d) Within five working days after making a report described in subsections (a) or (b) of this section, the individualized skills and socialization provider must ensure an investigation of the incident is conducted and send a written investigation report on Form 3613-A, Provider Investigation Report, or a form containing, at a minimum, the information required by Form 3613-A, to HHSC's Complaint and Incident Intake.

§559.243. Complaint Investigation.

(a) A complaint is any allegation received by the Texas Health and Human Services Commission (HHSC) regarding abuse, neglect, or exploitation of an individual, or a violation of state standards.

(b) HHSC must give the individualized skills and socialization provider notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

(c) HHSC investigates complaints of abuse, neglect, or exploitation when the alleged victim is an individual receiving services from an individualized skills and socialization provider, and:

(1) the act occurs at the on-site individualized skills and socialization location;

(2) the act occurs during the provision of off-site individualized skills and socialization;

(3) the individualized skills and socialization provider is responsible for the supervision of the individual at the time the act occurs; or

(4) the alleged perpetrator is affiliated with the individualized skills and socialization provider.

(d) Complaints of abuse, neglect, or exploitation not meeting the criteria in subsection (a) of this section must be referred to the Texas Department of Family and Protective Services.

(e) Complaint investigations must include a visit to the individualized skills and socialization provider and consultation with persons thought to have knowledge of the circumstances. If the individualized skills and socialization provider fails to admit HHSC staff for a complaint investigation, HHSC will seek a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them.

(f) In cases concluded to be physical abuse, the written report of the investigation by HHSC must be submitted to the appropriate law enforcement agency.

(g) In cases concluded to be abuse, neglect, or exploitation of an individual with a guardian, the written report of the investigation by HHSC must be submitted to the probate or county court that oversees the guardianship.

§559.245. Confidentiality.

All reports, records, communications, and working papers used or developed by the Texas Health and Human Services Commission (HHSC) in an investigation are confidential and may be released only as provided in this section.

(1) The final written investigation report on cases may be furnished to the district attorney and appropriate law enforcement agencies if the investigation reveals abuse that is a criminal offense. HHSC may provide to another state agency or governmental entity information that is necessary for HHSC, state agency, or entity to properly execute its duties and responsibilities to provide services to a person with a disability or the elderly.

(2) The final written investigation report may be released to the public upon request provided the report is de-identified to remove all names and other personally identifiable data, including any information from witnesses and other person furnished to HHSC as part of the investigation.

(3) The reporter and the individualized skills and socialization provider will be notified of the results of HHSC's investigation of a reported case of abuse, neglect, or exploitation, whether HHSC concluded that abuse, neglect, or exploitation occurred or did not occur.

(4) Upon written request of the person who is the subject of the report of abuse, neglect, or exploitation or his or her legal representative, HHSC releases to the person or his or her legal representative otherwise confidential information relating to the final report. The request must specify the information desired and be signed and dated by the person or his or her legal representative. The legal representative of a deceased person may make a written request for this information. The legal representative of a deceased person must also specify the reason the information is requested. Any legal representative must include with the request sufficient documentation to establish his or her authority. HHSC edits the information before release to protect the confidentiality of information related to the reporter's identity and to protect any other person whose safety or welfare may be endangered by disclosure.

§559.247. Nonemergency Suspension.

(a) The Texas Health and Human Services Commission (HHSC) may suspend an individualized skills and socialization provider's license when the individualized skills and socialization provider's violation of the licensure rules threatens to jeopardize the health and safety of individuals.

(b) Suspension of a license may occur simultaneously with any other enforcement provision available to HHSC.

(c) The individualized skills and socialization provider will be notified by certified mail of HHSC's intent to suspend the license, including the facts or conduct alleged to warrant the suspension. The individualized skills and socialization provider has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §559.217 of this subchapter (relating to Opportunity to Show Compliance). If the individualized skills and socialization provider requests an opportunity to show compliance, HHSC will give the license holder a written affirmation or reversal of the proposed action.

(d) The individualized skills and socialization provider will be notified by certified mail of HHSC's suspension of the individualized skills and socialization provider's license. If HHSC suspends an individualized skills and socialization provider's license, the licensee may request a formal appeal by following the HHSC's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). A formal administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I. The suspension will take effect when the deadline for appeal of the suspension passes unless the individualized skills and socialization provider appeals the suspension. If the individualized skills and socialization provider appeals the suspension, the status of the license holder is preserved until final disposition of the contested matter.

(e) The suspension will remain in effect until HHSC determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. HHSC will conduct an on-site investigation before making a determination.

(f) An individualized skills and socialization provider with a suspended license will be removed from HHSC's Day Activity and Health Services (DAHS) directory while the suspension is in effect.

§559.249. Revocation.

(a) The Texas Health and Human Services Commission (HHSC) may revoke an individualized skills and socialization provider's license when the license holder has violated the requirements of the Texas Human Resources Code, Chapter 103.

(b) In addition, HHSC may revoke a license if the licensee:

(1) submitted false or misleading statements in the application for a license or any accompanying attachments;

(2) used subterfuge or other evasive means to obtain the license;

(3) concealed a material fact in the application for a license or failed to disclose information required in §559.205 of this subchapter (relating to Criteria for Licensing) that would have been the basis to deny the license under §559.215 of this subchapter (relating to Criteria for Denying a License or Renewal of a License); or

(4) violated the requirements of the Texas Human Resources Code, Chapter 103, or the rules adopted under this subchapter.

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to HHSC.

(d) The individualized skills and socialization provider will be notified by certified mail of HHSC's intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The individualized skills and socialization provider has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §559.217 of this subchapter (relating to Opportunity to Show Compliance). If the individualized skills and socialization provider requests an opportunity to show compliance, HHSC will give the license holder a written affirmation or reversal of the proposed action.

(e) If HHSC revokes an individualized skills and socialization provider's license, the licensee may request a formal appeal by following the Health and Human Services Commission's formal hearing procedures in 1 TAC Chapter 357, Subchapter I. A formal administrative hearing is conducted in accordance with the formal hearing procedures in 1 TAC Chapter 357, Subchapter I. If the individualized skills and socialization provider appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter.

(f) An individualized skills and socialization provider will be removed from HHSC's Day Activity and Health Services (DAHS) directory if the license is revoked.

§559.251. Emergency Suspension and Closing Order.

(a) The Texas Health and Human Services Commission (HHSC) will suspend an individualized skills and socialization provider's license or order an immediate closing of part of the facility if:

(1) HHSC finds that the individualized skills and socialization provider is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of an individual.

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date the license holder receives a hand-delivered written notice or on a later date specified in the order.

(c) The order suspending a license or ordering an immediate closing of a part of the facility is valid for ten days after the effective date of the order.

(d) A licensee whose facility is closed under this section is entitled to request a formal administrative hearing under the Health and Human Services Commission's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), but a request for an administrative hearing does not suspend the effectiveness of the order.

(e) An individualized skills and socialization provider will be removed from HHSC's Day Activity and Health Services (DAHS) directory during an effective emergency suspension or closing order.

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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER H. COLLECTION ACTION

40 TAC §§815.190 - 815.192

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 815, relating to Unemployment Insurance:

Subchapter H. Collection Action, §§815.190 - 815.192

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 815 rule change is to establish administrative rules to implement and interpret Senate Bill (SB) 695, which was passed in 2021 by the 87th Texas Legislature, Regular Session.

When an employer does not timely pay its required unemployment taxes after being notified of the debt, the Texas Unemployment Compensation Act (TUCA) provides regulations for collecting the past due contributions. TUCA, Chapter 213, Subchapter C provides methods for collections of unpaid unemployment contributions, penalties, and interest by civil suit or Notice of Assessment (NOA). TWC is required to take this action. An NOA is only attempted after TWC has exhausted other avenues of tax collections including the tax statement, default notices, pre-assessment notifications, tax liens, and tax levies.

An NOA is a written decision of a tax authority where the amount of taxable income is determined and the amount of tax due is calculated. In 1989, House Bill 1941, 71st Texas Legislature, Regular Session, provided for collection of delinquent unemployment benefit taxes, penalties, or interest by serving an NOA on an employer that owes unemployment taxes. The Legislature granted TWC this authority after an audit by the Office of the State Auditor contained findings regarding the significant amount of time taken before a judgment can be obtained by civil suit.

The NOA correspondence totals the amount of taxes, penalties, or interest owed by the employer. Once the NOA is served upon the employer, TWC loses jurisdiction over the NOA and may not change it. After being served, the employer's sole avenue of redress of an grievance is through judicial review. If the employer does not seek judicial review, or if the assessment is upheld after judicial review, the assessment is final and is recorded as a judgment against the employer. The final NOA has the same effect as a final judgment of a district court.

SB 695, a TWC initiative that amended Texas Labor Code, §213.032(a), was signed by the Governor on June 4, 2021, and became effective on September 1, 2021.

Prior to the passage of SB 695, Texas Labor Code, §213.032(a) required TWC to serve an NOA in the same manner as provided in Texas Rules of Civil Procedure Rule 106.

Texas Rules of Civil Procedure Rule 106 allows for service by personal service or by certified mail by any person authorized by Texas Rules of Civil Procedure Rule 103. However, per Texas Rules of Civil Procedure Rule 103, an interested party, such as

TWC, may not serve any process. This meant that TWC was required to use a process server to mail its NOAs to liable employers. With the passage of SB 695, this limitation is no longer in place.

Additionally, SB 695 addressed substituted service. In certain situations, an employer that owes unpaid contributions, interest, or penalties may try to escape liability by avoiding service of the NOA by personal service or mail. An example would be an employer residing in a gated community that will not allow access to a process server and the employer will not accept the mail. In these situations, Texas Rules of Civil Procedure Rule 106 states that a court may grant a substituted method of service. This created substantial difficulties as TWC could not seek substituted service because it did not have a cause number to petition for substituted service as no suit has been filed. Filing suit would defeat the Legislature's intended purpose of granting TWC the authority to issue NOAs as it is not uncommon for service to be unsuccessful in person or by mail.

Effective December 31, 2021, the Texas Supreme Court updated Texas Rules of Civil Procedure Rule 106 to allow substituted service "in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER H. COLLECTION ACTION

TWC proposes new Subchapter H, as follows:

§815.190. Service of a Notice of Assessment in General

New §815.190 provides general information about service of a Notice of Assessment.

New §815.190 clarifies that the language in Texas Labor Code, §213.032(a)(3), which states, "in another manner that is reasonably calculated to give the employer notice of the assessment," be referred to as substituted service and that contesting service must be done in Travis County district court as required by Texas Labor Code, §213.032(c). New §815.190 also clarifies that Texas Labor Code, §213.032(a) provides TWC with the flexibility to serve parties itself or by designated third party.

New §815.190 informs parties of the addresses TWC may use for service by personal delivery or substituted service.

Texas Labor Code, §212.006(b) and §214.002(a)(3) allow for NOAs to be served upon claimants as well as employers. New §815.190 interprets certain language in Texas Labor Code, Chapter 213 to more clearly apply to claimant assessments in those situations. To that end, new §815.190 states the language in Texas Labor Code, §213.033(a) prescribing a three-year limitation on employer assessments for employer contributions, penalties, and interest be limited to the third anniversary after the benefit overpayment becomes final when it relates to claimant assessments. This interpretation is prudent as overpayment amounts may change during the dispute resolution process.

§815.191. Service of a Notice of Assessment by Personal Delivery or Mail

New §815.191 provides information and clarification regarding service of an NOA by personal delivery or mail.

New §815.191 clarifies what constitutes "address as shown by commission records" for Texas Labor Code, §213.032(a)(2) and

that TWC or its designee may make multiple service attempts under Texas Labor Code, §213.032(a)(1) and (2) prior to attempting substituted service.

New §815.191 clarifies what address(es) shall be used when serving an NOA upon a claimant by personal delivery or mail.

§815.192. Service of a Notice of Assessment by Substituted Service

New §815.192 provides information and clarification regarding service of an NOA by substituted service.

New §815.192 clarifies that TWC or its designee may make multiple attempts at substituted service. It also provides methods by which TWC may effectuate substituted service. The enumerated methods are intended to put parties on notice of methods TWC intends to use and considers to be proper to effectuate substituted service, although the list is not exhaustive or dispositive in all circumstances.

Such methods may include those methods specifically mentioned by Texas Rules of Civil Procedure Rule 106(b) including by social media, email, or other technology, TWC-established contact methods, including the Unemployment Tax Services and the Unemployment Benefits Services portals, or other mailing addresses that are not maintained in TWC records as required by Texas Labor Code, §213.032(a)(2). Other mailing addresses may include those obtained from third-party background and reporting agencies, online searches, and other government records.

Additionally, certain corporations may need to be served as prescribed by Texas Business Organizations Code, Chapter 5, and Civil Practice and Remedies Code, Chapter 17. This would be applicable when attempting personal or substituted service upon the corporation's registered agent or the Secretary of State if no valid agent exists. Only Texas Labor Code, §213.032(a)(2) contains a requirement that the NOA be mailed to an address in TWC records, so personal or substituted service can be attempted upon registered agents.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are estimated increases in revenue to the state as a result of enforcing or administering the rules. TWC anticipates a positive impact to the unemployment trust fund as a result of increased service of NOAs and the corresponding recovery of debt owed to the trust fund. There are no estimated losses or increases in revenue to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish administrative rules to implement and interpret SB 695.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC determined that during the first five years the rules will be in effect, they:

- 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 TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Chuck Ross, Director, Fraud Deterrence and Compliance Monitoring, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be increased efficiency and effectiveness in successfully collecting debts owed to the State of Texas and a corresponding positive trust fund impact.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 12, 2022.

PART V. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015(a)(6), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4.

§815.190. Service of a Notice of Assessment in General.

(a) This section applies to a service of a notice of assessment under §213.032(a) of the Act.

(b) As used in this subchapter, service "in another manner that is reasonably calculated to give the employer notice of the assessment" shall be referred to as "substituted service."

(c) The Agency may attempt all forms of service authorized by the Act. Additionally, the Agency may engage third-party designees to provide service, including a process server, sheriffs or constables, common carrier, or other courier service when attempting service, as applicable.

(d) Service by personal delivery and substituted service may be attempted at addresses other than the address as shown by Agency records, including those designated under Texas Business Organizations Code, Chapter 5 and from third-party background and reporting agencies, online searches, and other government records.

(e) When collecting an overpayment of benefits from a claimant through a notice of assessment, as authorized by §212.006(b) and §214.002(a)(3) of the Act, the term "claimant" shall be substituted for the terms "employer" and "defaulting employer" found in Chapter 213, Subchapters C and D of the Act, as applicable. Collection by making a claimant assessment is limited to the third anniversary after the benefit overpayment becomes final except as otherwise tolled by §213.033 of the Act.

(f) A party seeking to contest service shall do so under §213.032(c) of the Act.

§815.191. Service of a Notice of Assessment by Personal Delivery or Mail.

(a) This section applies to a service of a notice of assessment under §213.032(a)(1) and (2) of the Act.

(b) An "employer's address as shown by commission records" includes the employer's address as reported on its status report, as provided under §815.3 of this chapter, or other address maintained by the Agency for the purpose of corresponding with the employer.

(c) Service of a notice of assessment upon a claimant shall be served upon the claimant's address as shown by Agency records. For service upon a claimant, this includes the address as provided under §815.3(c) of this chapter, or other address maintained by the Agency for the purposes of corresponding with the claimant.

(d) The Agency or its designee may make multiple service attempts by personal delivery and registered or certified mail before attempting substituted service.

§815.192. Service of a Notice of Assessment by Substituted Service.

(a) This section applies to substituted service of a notice of assessment under §213.032(a)(3) of the Act.

(b) The Agency may use the following methods to effectuate substituted service:

(1) Those methods specifically mentioned by the Texas Rules of Civil Procedure Rule 106(b);

(2) By Agency-established contact methods including the Unemployment Tax Services and the Unemployment Benefits Services portals or their equivalents;

(3) Mail to another known address;

(4) As set out in Texas Business Organizations Code, Chapter 5, and Civil Practice and Remedies Code, Chapter 17; and

(5) Other means of service expressly permitted or prescribed by state law.

(c) The Agency or its designee may make multiple substituted service attempts if there exist multiple manners reasonably calculated to give the employer notice of the assessment.

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 26, 2022.

TRD-202202803

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: September 11, 2022

For further information, please call: (512) 689-9855



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

The Texas Board of Veterinary Medical Examiners withdraws proposed amended §573.27, which appeared in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3395).

TRD-202202826

John Hargis

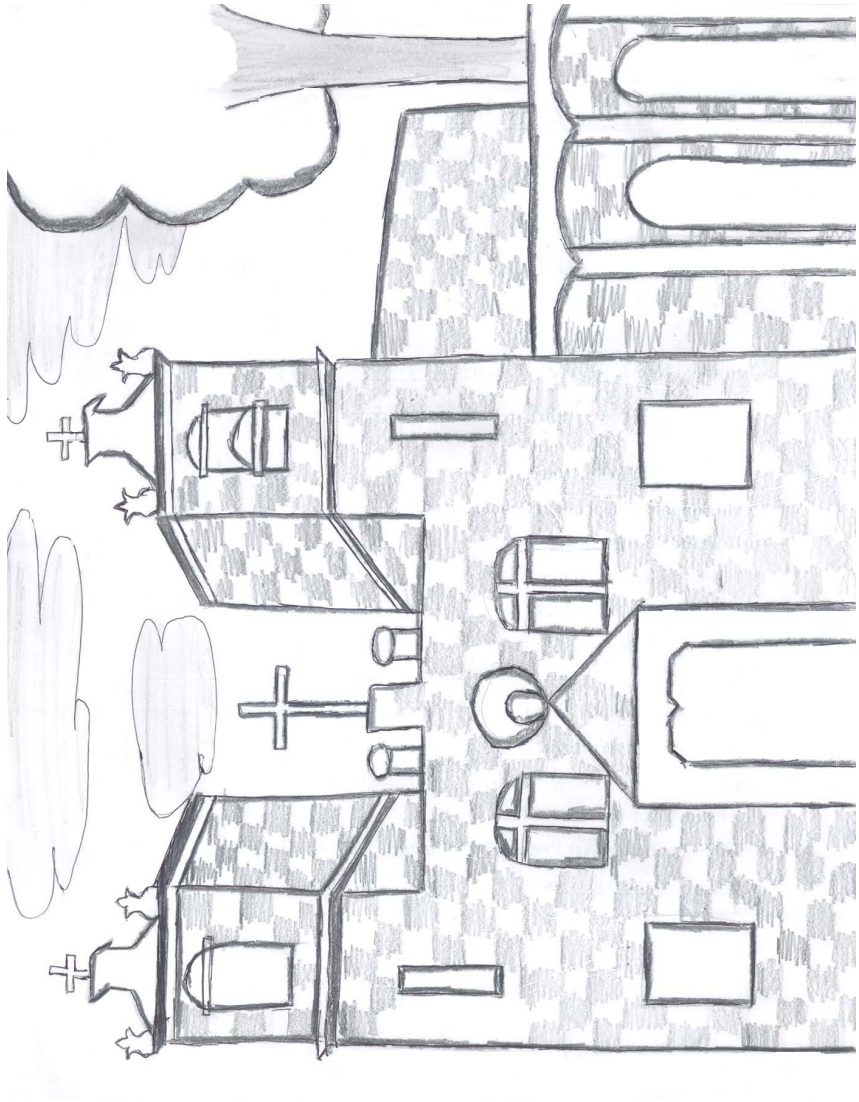
General Counsel

Texas Board of Veterinary Medical Examiners

Effective date: July 27, 2022

For further information, please call: (512) 693-4500, Ext. 3





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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.203

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter E, §1.203, concerning the Texas-Israel Exchange Fund (TIE) Advisory Committee. The repeal is adopted without changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3599) and will not be republished.

Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed Chapter 45.009, Texas Agriculture Code, which provided for the creation of the TIE Advisory Committee. The repeal of Texas Agriculture Code, §45.009 necessitates repeal of corresponding rules for the TIE Advisory Committee.

The Department did not receive any comments regarding the proposed repeal.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2022.

TRD-202202841

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: August 17, 2022

Proposal publication date: June 24, 2022

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



CHAPTER 17. MARKETING AND PROMOTION SUBCHAPTER E. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM

4 TAC §§17.100 - 17.104

The Texas Department of Agriculture (Department) adopts the repeal of 4 Texas Administrative Code, Chapter 17, Subchapter E, regarding Texas-Israel Exchange (TIE) Research Program Rules, §§17.100 - 17.104. The repeals are adopted without changes to the proposed text as published in the June 24, 2022 issue of the *Texas Register* (47 TexReg 3600) and will not be republished.

Section 56 of Senate Bill 703, 87th Texas Legislature, Regular Session (2021), among other things, repealed 45.009, Texas Agriculture Code, which provided for the creation of the TIE Advisory Committee. Furthermore, funding for the program has been suspended and the program has been inactive for the past 10 years. As a result, rules for the Texas-Israel Exchange Research Program are no longer necessary.

The Department did not receive any comments regarding the proposed repeals.

The repeals are adopted under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 28, 2022.

TRD-202202842

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: August 17, 2022

Proposal publication date: June 24, 2022

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



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.9

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts amended §31.9, related to the commission's Public Safety Advisory Committee, without changes to the text as published in the June 3, 2022, *Texas Register* (47 TexReg 3209). The rule will not be republished.

No public comments were received.

The amended rule is adopted pursuant to the agency's authority under §5.21 of the Alcoholic Beverage Code, authorizing the establishment of advisory committees; §31.6 of the commission's rules, which requires that a rule establishing a committee include qualifications of the members; and §5.31 of the Alcoholic Beverage Code by which the commission may prescribe and publish rules necessary to carry out the provisions of the code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-202202805

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: August 16, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 206-3451



CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATIONS

16 TAC §33.16

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeal of 16 Texas Administrative Code §33.16 as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3210) as part of a reorganization of its rules. The rule will not be republished.

No comments were received.

This repeal is adopted pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code.

The adopted repeal does not impact any other current rules or statutes.

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 27, 2022.

TRD-202202806

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: August 16, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 206-3451



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER D. TEXAS FIRST EARLY HIGH SCHOOL COMPLETION PROGRAM

19 TAC §§21.50 - 21.55

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 21, Subchapter D, §§21.50 - 21.55, Texas First Early High School Completion Program, without changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2405). The rules will not be republished.

Texas Education Code §28.0253 provides the Coordinating Board with the authority to adopt standards for a student to graduate early from high school and earn a diploma equivalent to the distinguished level of achievement by demonstrating early readiness for college.

In order to implement the Texas First Early High School Completion Program, the Coordinating Board is charged with defining and codifying in rule the criteria a student must meet in order to participate in this program and qualify for the Texas First Scholarship Program upon early enrollment at an eligible Texas public institution of higher education. Authority to adopt rules is provided in Texas Education Code §28.0253(c). As required by Texas Education Code § 28.0253(b), the Coordinating Board conferred with the Texas Education Agency to establish this program. The diploma established under this program enables a student to apply for admission to an eligible Texas public institution of higher education and also qualify for the Texas First Scholarship Program, established under Texas Education Code §§56.221-56.227, to promote efficiency in the state public education system and incentivize the enrollment of high performing students at eligible Texas institutions.

In addressing Texas Education Code §28.0253(c), agency staff consulted with admissions and enrollment management administrators from eligible institutions in establishing a framework for the Texas First Early High School Completion Program (Program) and providing additional feedback. The information provided in the rules helps ensure all stakeholders have a clear understanding of the criteria needed to meet the Program requirements and related benefits that may incentivize students who otherwise apply for postsecondary opportunities outside of Texas to consider applying at one or more of the eligible Texas institutions.

Section 21.50 confirms the authority and purpose of the Program, as provided in Texas Education Code §28.0253(b)(c).

Section 21.51 provides definitions for the Program, as included in Texas Education Code §28.0253(a).

Section 21.52 provides the minimum criteria by which students demonstrate eligibility for the Program, including high school credits, minimum Grade Point Average, and achieving an overall minimum score on one of five assessments or achieving a Grade Point Average that ranks the student in the top ten percent of the student's class. Institutions and the Commissioner of Higher Education jointly developed and recommended these cut points as those that distinguish students who are college ready and prepared for post-secondary success. Allowing a student to meet the requirement based on class rank or assessment scores provides for a more holistic view of readiness.

Section 21.52 also provides the assessments and related standards and competencies that demonstrate a student's mastery of each subject area for which the Coordinating Board

and Commissioner of Higher Education have adopted college readiness standards, plus a language other than English, as required in Texas Education Code §28.0253(c). It provides a process by which a student verifies eligibility for the Program and codification on the student's transcript. These standards align to scores established by the Coordinating Board to define college readiness and provide for the use of assessments and scores commonly used by institutions to place students in college-level course work.

Section 21.53 verifies that the diploma awarded through this program is equivalent to the distinguished level of achievement, as required in Texas Education Code §28.0253(f).

Section 21.54 provides a notification requirement by the high school to its students and their parents or guardians listing the eligibility requirements for the Program, including the requirement for the student to provide official copies of applicable assessments to receive credit, as required in Texas Education Code §28.0253(g).

Section 21.55 confirms that students who meet all the Program requirements according to Title 19 Texas Administrative Code §21.52 have met the requirements of the Texas Success Initiative according to Texas Education Code Chapter 51 and the initial eligibility requirements of the TEXAS Grant program, as authorized by the Toward EXcellence, Access, and Success Grant Program under Texas Education Code §56.3041.

No comments were received regarding the adoption of the new rule.

New Subchapter D is adopted under Texas Education Code, §28.0253, which provides the Coordinating Board with the authority to adopt standards for a student to graduate early from high school earn a diploma equivalent to the distinguished level of achievement by demonstrating early readiness for college.

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 August 1, 2022.

TRD-202202855

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 21, 2022

Proposal publication date: April 29, 2022

For further information, please call: (512) 427-6262



CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER T. TEXAS FIRST SCHOLARSHIP

19 TAC §§22.550 - 22.556

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter T, §§22.550 - 22.556, Texas First Scholarship Program. Section 22.553 is adopted with changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2408) and will be republished. The changes to

the text reflect corrections to the references to Texas Administrative Code Subchapter A. Sections 22.550 - 22.552 and 22.554 - 22.556 are adopted without change and will not be republished.

Specifically, §22.550 outlines the Authority and Purpose of the Texas First Scholarship Program, and §22.551 provides definitions applicable to the program.

The Texas First Scholarship is a portable scholarship, which a student may use at any public research or emerging research institution in the state. As such, §22.552 requires research and emerging research institutions to participate in the program. Research and emerging research institutions must also abide by the General Provisions outlined in Subchapter A of Chapter 22.

The statutory requirements that a student must meet to receive a Texas First Scholarship are outlined in §22.553, and §22.554 indicates the time period within which a recipient must use the state credit provided through the program.

The amount of the state credit issued through the Texas First Scholarship Program is tied in statute to the maximum value of the TEXAS Grant, and §22.555 indicates how the state credit value is calculated. The impact of the state credit on a student's other financial aid is also outlined in statute, as is the manner in which the state credit is to be applied to a student's educational expenses, both of which are also outlined in §22.555.

As outlined in Texas Education Code §56.226, the Texas First Scholarship Program uses a reimbursement approach, whereby institutions apply the state credit to a student's charges in one academic year and are reimbursed with state funding in the following academic year. As such, the reimbursement model, including the reporting required, is outlined in §22.556.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Section 56.227, which provides the Coordinating Board with the authority to adopt rules necessary to implement Texas Education Code, Chapter 56, Subchapter K-1, Texas First Scholarship Program.

§22.553. *Eligible Students.*

To qualify for a scholarship, a person must:

- (1) be enrolled at an eligible institution, as outlined in §22.552 (relating to Eligible Institutions);
- (2) be a Resident of Texas;
- (3) have graduated early from high school under the Texas First Early High School Completion Program Chapter 21, Subchapter D;
- (4) comply with Education Code Section 28.0256; and
- (5) meet applicable standards outlined in Subchapter A of this Chapter (relating to General Provisions), including §22.3 (relating to Student Compliance with Selective Service Registration).

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 August 1, 2022.

TRD-202202856

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 21, 2022
Proposal publication date: April 29, 2022
For further information, please call: (512) 427-6365



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency adopts an amendment to §61.1011, concerning the formula transition grant. The amendment is adopted without changes to the proposed text as published in the May 20, 2022 issue of the *Texas Register* (47 TexReg 2989) and will not be republished. The adopted amendment extends certain provisions related to the average daily attendance (ADA) hold harmless to the 2020-2021 school year.

REASONED JUSTIFICATION: The adopted amendment to §61.1011 updates subsection (c)(4) regarding ADA. The change extends to the 2020-2021 school year the provision that allows exclusion of any reduction in ADA arising from the application of Elementary and Secondary School Emergency Relief (ESSER) funding toward the ADA hold harmless.

The adopted amendment removes language providing alternative provisions between the 2019-2020 and the 2020-2021 school years.

Subsection (c)(7) updates the term "students with limited English proficiency" to "emergent bilingual students" in alignment with Senate Bill 2066, 87th Texas Legislature, Regular Session, 2021.

New subsection (c)(14) excludes school district entitlements for certain students under TEC, §48.281, in calculations for the formula transition grant.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 20, 2022, and ended June 20, 2022. No public comments were received.

STATUTORY AUTHORITY: The amendment is adopted under Texas Education Code (TEC), §48.004, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under House Bill 3, 86th Texas Legislature, 2019, and funding under prior law.

CROSS REFERENCE TO STATUTE: The amendment implements Texas Education Code, §48.004 and §48.277.

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 27, 2022.

TRD-202202817
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 16, 2022
Proposal publication date: May 20, 2022
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.17

The Texas Optometry Board (Board) adopts new §273.17, concerning Emergency Management. The adopted new rule requires CPR or BLS for initial licensure and for renewal licensure beginning January 1, 2023.

Rule 273.17 is adopted with one technical change to the proposed text published in the May 27, 2022 issue of the *Texas Register* (47 TexReg 3103). This rule will be republished.

SUMMARY OF TECHNICAL CHANGE(S):

Section §273.17(a)(2) - Change "Services" to "Support".

No public comments were received.

New Board Rule §273.17 is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession.

§273.17. *Emergency Management.*

(a) Definitions.

(1) Cardiopulmonary resuscitation (CPR) is an emergency lifesaving procedure performed when the heart stops beating. A certification in CPR includes training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.

(2) Basic Life Support (BLS) is a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical services care. A certification in BLS includes training and successful course completion in airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures, according to recognized national standards.

(b) Requirement for Initial License. Commencing effective January 1, 2023, all applicants for initial licensure shall provide proof of successful completion of a CPR or BLS certification prior to receiving a license.

(c) Requirement for Renewal of License. Effective January 1, 2023, all active licensees shall provide proof of successful completion of a CPR or BLS certification for renewal of a license each renewal cycle. Licensees may be credited two general hours of continuing education for CPR certification and four general hours of continuing education for BLS certification.

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 29, 2022.

TRD-202202848

Kelly Parker

Executive Director

Texas Optometry Board

Effective date: August 18, 2022

Proposal publication date: May 27, 2022

For further information, please call: (512) 305-8500



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.52

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.52, concerning Veterinarian Patient Record Keeping. These amendments are adopted with changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3396). The rule will be republished.

The amendments are adopted, in part, to clarify what information is required for compliance. The amendments also update the rule in keeping with advances in the medical information modalities offered to the animal owning public and to increase the standards of veterinary medical practice. The changes reflect non-substantive variations from the proposed amendment. The changes affect no new persons, entities, or subjects other than those given notice, and the rule, as adopted, does not impose more stringent requirements than the proposed version.

The following entities furnished written comments on the proposed amendment: Texas Veterinary Medical Association (hereinafter "TVMA") and several other individual veterinarians.

TVMA and other individual veterinarians' comments essentially covered the same concerns contending the proposed rule, under subsection (a)(6) Examination Findings, requires the veterinarian to record medical data such as pulse and respiration rate, when the information often times is not useful and it would subject the veterinarian to disciplinary action for failing to record unnecessary information. The Board disagrees because under subsection (a)(6) the rule says, "if required for diagnosis or treatment and is not difficult to obtain," they would be required to record the listed medical information. The conditional language in the said subsection clearly allows the veterinarian latitude to practice medicine the way they see fit. Therefore, a veterinarian is not required to record the information they determine is not required for diagnosis or treatment or where it is difficult to obtain.

TVMA and other veterinarians commented against subsection (a)(12), regarding anesthesia monitoring. They contended it is too difficult to free up their aseptic hands to record real-time data or to recall every time they checked significant data. The Board disagrees that requiring basic information under subsections

(a)(11) and (a) (12), such as the description of the procedure, the name of the surgeon, type of sedative and anesthetic agent used, route of administration, and dosage, is too much to ask of a medical professional. The requirement is very broad and a basic surgical report. For example, a horse castration would be sufficiently reported by documenting the horse's name, the owner's name, the doctor's name, name of sedative--Ketamine, Xylazine, and Valium--time of surgery, routine castration performed on right lateral recumbency, removed two testicles using an emasculator, and that the horse stood without complications at a time certain. This section in the rule gives large latitude to the practitioner to decide what they want to record.

The amendments are adopted under the authority of §§801.151(b) and 801.151(c) of the Texas Veterinary Licensing Act (Chapter 801, Texas Occupations Code). The Board interprets §801.151(c) as authorizing the agency to protect the public through adopting rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

§573.52. Veterinarian Patient Record Keeping.

(a) A veterinarian performing a physical examination, diagnosis, treatment or surgery on an animal or group of animals shall prepare a legible written record or computer record concerning the animals containing, at a minimum, the following information:

- (1) name, address, and telephone number of the owner;
- (2) identity of the species, animal, herd, or flock;
- (3) except for herds or flocks, the age, sex, color, and breed;
- (4) dates of examination, treatment and surgery;
- (5) brief history of the condition of each animal, litter, herd, or flock;
- (6) examination findings, if required for diagnosis or treatment and is not difficult to obtain:
 - (A) weight - actual or estimated;
 - (B) temperature;
 - (C) pulse;
 - (D) respiration; and
 - (E) any additional findings needed for diagnosis;
- (7) laboratory and radiographic tests performed and reports;
- (8) differential diagnosis; referrals/consultations; to/with specialists and the client's response;
- (9) procedures performed/treatment given and results;
- (10) drugs (and their dosages) administered, dispensed, or prescribed;
- (11) surgical procedures shall include a description of the procedure, the name of the surgeon, the type of sedative/anesthetic agent used, the route of administration and the dosage; and
- (12) anesthesia monitoring performed during surgical procedures.

(b) Individual records must be maintained on each patient, except that records on livestock or litters of animals may be maintained on a per-client basis. Records pertaining to these animals may be kept in a daily log or billing records, provided that the treatment informa-

tion is substantial enough to identify these animals and the medical care provided.

(c) Medical records and radiographs are the physical property of the hospital or the proprietor of the practice that prepared them. Records, including radiographs, must be maintained for a minimum of three years after the last visit.

(d) Medical records shall be released upon request from a treating veterinarian with a legitimate interest, and shall be returned to the originating practice within a reasonable time if requested. Copies of records must be made available upon request from the owner of an animal at a reasonable cost to the owner and within a reasonable time. A veterinarian may not withhold the release of veterinary medical records for nonpayment of a professional fee.

(e) All regulated substances shall be recorded as required by federal and/or state regulations.

(f) Any signed acknowledgement required by §§573.14 and 573.16 - 573.18 (relating to all complementary therapies).

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 27, 2022.

TRD-202202832

John Hargis

General Counsel

Texas Board of Veterinary Medical Examiners

Effective date: August 16, 2022

Proposal publication date: June 10, 2022

For further information, please call: (512) 693-4500x3



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Commission, in a duly noticed meeting on March 24, 2022, adopted amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation. The amended rules are adopted without changes to the proposed text as published in the February 18, 2022, issue of the *Texas Register* (47 TexReg 749) and will not be republished.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

The amendments specify the season dates for hunting the various species of migratory game birds for 2022-2023. With two exceptions, the rules retain the season structure and bag limits for all species of migratory game birds from last year while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week), since dates from a previous year do not fall on the same days in following years.

The amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, removes the explicit restrictions governing daily bag limits for mergansers. At one time, merganser populations were in decline, but populations are now robust and mergansers are plentiful. Since the federal frameworks no longer stipulate a special limit for mergansers, the amendment allows the take of up to six mergansers per day as part of the aggregate daily duck bag limit.

The amendment to §65.316, concerning Geese, opens and closes the season for light geese in the Western Zone one week earlier than last year. The department's intent is to provide greater hunting opportunity for white-fronted geese, which arrive in the Western Zone in large numbers earlier than other species of geese.

The amendment to §65.317, concerning Special Youth-Only Waterfowl Season, establishes special provisions applicable to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training. The amendment also changes the title of the section accordingly. The 87th Texas Legislature (RS) enacted Senate Bill 675, which authorizes the commission to provide for special open seasons during which the taking and possession of ducks, geese, mergansers, coots, moorhens, and gallinules are restricted to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training, and to combine those seasons with other special seasons. The amendment combines the current youth-only special season with a special season for active-duty military personnel and military veterans and prescribes eligibility requirements for participation, which is necessary to provide a method of identifying persons legally authorized to participate in the special season. The eligibility requirements are those forms of official governmental documentation and identification that explicitly identify the person to whom they are issued as a member of the active-duty military or a military veteran. Additionally, Senate Bill 675 provides that if rules adopted by the commission require a person participating in the special open season to have in possession proof of veteran or active-duty status in possession, the rule must also provide that it is a defense to prosecution under that rule that the person produces in court proof of the person's veteran or active-duty status in accordance with commission rule. Accordingly, the rule as adopted does so.

The amendment to §65.318, concerning Sandhill Crane, corrects an inadvertent omission that occurred in 2016 when the department merged the Early Season Migratory Game Bird Proclamation and the Late Season Migratory Game Bird Proclamation to create a single Migratory Game Bird Proclamation in response to a change in the federal process for establishing frameworks for migratory game bird hunting. In the process of that effort, the department inadvertently omitted a provision citing the federal requirement for a free federal sandhill crane hunting permit to be obtained by persons who hunt sandhill cranes. The permit

is a federal requirement and is used to provide more accurate survey data for management purposes.

The amendments also make nonsubstantive housekeeping-type changes to punctuation and phrasing for consistency.

The department received three comments opposing adoption of the proposed amendment to §65.314 that established dove seasons. Each of the commenters stated that the season in the South Zone should not open on a Friday because it adds pressure to the population and creates management challenges for hunting lease operators. The commenters stated that the season should either open on the same day as the rest of the state or be limited to Saturday and Sunday afternoon hunts. The department disagrees with the comments and responds that department surveys indicate a preference among hunters and landowners for the earliest possible hunting opportunity available under the federal frameworks in the South Zone.

The department received no comments supporting adoption of the proposed amendment.

The department received 54 comments opposing adoption of the portion of the proposed amendment to §65.315 that eliminated the composite bag limit for mergansers and merged the bag limit for mergansers with the bag limit for ducks. Of those comments, seven offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that bag limits for mergansers are too high and the population has been extirpated. The department disagrees with the comment and responds that data at the state and continental levels indicate that merganser populations are robust and growing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should establish a yearly bag limit because limited habitat could cause numbers to decrease. The department disagrees with the comment and responds that data at the state and continental levels indicate that merganser populations are robust and growing, that habitat is not limited, and that the bag limit will not result in negative population impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that mergansers are not ducks and limiting the bag limit will deter new hunters from becoming hunters "due to associated costs verses reward." The department disagrees with the comment and responds that a merganser is a type of duck, and that although the rule as adopted reduces overall hunting opportunity, the department cannot alter the federal frameworks. The department notes that the rule does not impact the cost of hunting for anyone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that mergansers are not ducks, that combining the bag for mergansers and ducks reduces the number of birds that can be taken per day, and that because merganser populations are robust, the daily bag limit is being cut in half. The department disagrees with the comment and responds that mergansers are a type of duck and that the department cannot implement bag limits in excess of those allowed under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that merganser harvest will be drastically reduced because the aggregate bag limit will cause hunters to focus on other species of ducks. The

commenter also stated that the rule will result in waste because hunters who accidentally take a merganser will discard it in favor of a more desirable species. The department disagrees with the comment and responds that the harvest regulations are not expected to result in overpopulation of mergansers and that a hunter who discards a merganser after killing it commits an offence. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the total combined daily bag limit should be no more than five. The department disagrees with the comment and responds that it is commission policy to achieve maximum utilization of the resource that is allowable under the federal frameworks and that in any case the federal frameworks are biologically justifiable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be 12 per year. The department disagrees with the comment and responds that given the population status of various species, habitat quality, and attendant harvest pressure, there is no biological reason to limit the possession limit on an annual basis. No changes were made as a result of the comment.

The department received 37 comments supporting adoption of the rule as proposed.

The department received 10 comments opposing adoption of the proposed amendment to §65.316 that shifted the season timing for all species of geese in the Western Goose Zone. Of the 10 comments, six provided a justification or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the additional week of hunting opportunity should be added in February. The department disagrees with the comment and responds that the rule does not add an additional week of hunting opportunity, it shifts the current season to open and close one week earlier than last year. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rule was promulgated to appease outfitters and podcasters. The department disagrees with the comments and responds that the rule as adopted is intended to provide hunters with the opportunity to hunt when large numbers of geese of all species are present and not in response to any request or pressure from an external source. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the majority of goose hunters in the Western Goose Zone would prefer the season to be extended through the middle of February. The department disagrees with the comment and responds that department survey data does not support that claim. No changes were made as a result of the comment.

One commenter opposed adoption and stated that moving the season earlier will not change anything because ducks will still be in the eastern part of the zone before they arrive in the Panhandle, meaning there will be less of them when they reach the rest of the zone. The department disagrees with the comment and responds that the rule in question sets season dates for geese, not ducks, which have a separate season structure. No changes were made as a result of the comment.

The department received 10 comments supporting adoption of the rule as proposed.

The department received one comment opposing adoption of the proposed amendment to §65.317 that established duck seasons. The commenter stated that for the past three years, migration of ducks into the coastal prairies has not occurred until mid-to-late December with the strongest migration not occurring until late January into early February and that the department should start the duck season one week later in November and end the season one week later in the month of February. The department disagrees with the comment and responds that the season as adopted runs to the last day allowed under the federal frameworks, which the commission does not have authority to modify. No changes were made as a result of the comment.

The department received no comments supporting the proposed amendment.

The department received six comments opposing adoption of the portion of the proposed amendment to §65.317 that established a special opportunity for waterfowl for military veterans. Of those comments, three offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the special opportunity for veterans should not be concurrent with that for youth because youth opportunity should not be hindered. The department disagrees with the comments and responds that concurrent opportunity doesn't mean that opportunity for one segment of the regulated community occurs at the expense of another segment of the regulated community, and that in any case, Texas is so large and provides so much waterfowl hunting opportunity that even at full participation by both communities there would be no user conflict with respect to hunting opportunity. The department also notes that providing special opportunity for veterans at some other time would mean that two days of general hunting opportunity would be lost (as those days would count against the total number of days of waterfowl opportunity allowed to Texas under the federal frameworks), which would affect a large number of hunters and reduce overall hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that running the youth and veterans special hunting opportunity concurrently will result in overcrowding at public hunting areas and that the veteran's opportunity should occur the weekend following the end of the regular duck season. The department disagrees with the comment and responds that the special waterfowl season for youth and military veterans is statewide and not restricted to public hunting areas, that duck seasons as adopted run to the end of the federal frameworks, and that providing special opportunity for veterans at some other time than concurrently with the special youth season would mean that two days of general hunting opportunity would be lost, which would affect a large number of hunters. No changes were made as a result of the comment.

The department received 24 comments supporting adoption of the rule as proposed.

The department received four comments opposing adoption of the proposed amendment to §65.318 that reinserted missing language regarding the mandatory federal sandhill crane hunting permit.

One commenter opposed adoption and stated that sandhill cranes are an endangered species and should not be killed. The department disagrees with the comment and responds that sandhill cranes are not an endangered species, nor are they a threatened species, nor are they a species of concern, and

can be sustainably hunted without danger to the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no hunting of sandhill cranes because it will endanger their populations. The department disagrees with the comment and responds that sandhill crane populations at the current time can be sustainably hunted without negative impacts to the population. No changes were made as a result of the comment.

The department received 25 comments supporting adoption of the rule as proposed.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the commission and the executive director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

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 29, 2022.

TRD-202202853

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2022

Proposal publication date: February 18, 2022

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.33

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts amendments to §41.33, concerning Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program, under Subchapter C (relating to Texas School Employees Group Health (TRS-ActiveCare)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code without changes to the proposed text as originally published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3230). The rule will not be republished.

REASONED JUSTIFICATION

The adopted amendments to §41.33 redefine the definition of "Employee" and "Part-time Employee" so that, if the person meets the other requirements of the definition and is Medicare eligible, but is nevertheless receiving coverage from the programs under Chapters 1551, 1575, and 1601 of the Insurance Code, such person would still meet those definitions, and thus be eligible to participate in TRS-ActiveCare. The

adopted amendments will allow TRS and participating entities to offer TRS-ActiveCare to such employees in compliance with the Medicare Secondary Payor (MSP) law (42 U.S.C. §1395y(b)(1)(A)(i)(I)).

COMMENTS

No comments on the proposed adoption of amended rule were received.

STATUTORY AUTHORITY

Amended §41.33 is adopted under the authority of Insurance Code §1579.052, which allows the trustee to adopt rules relating to the program as considered necessary by the trustee and requires the trustee to take the actions it considers necessary to devise, implement, and administer the program; Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board; and Clause 2 of Article VI of the United States Constitution ("the Supremacy Clause").

CROSS-REFERENCE TO STATUTE

The adopted amended §41.33 affects Chapter 1579, Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage (TRS-ActiveCare).

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 29, 2022.

TRD-202202846

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: August 18, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 542-6506





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

Prescribed Burning Board

Title 4, Part 13

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), files this notice of intent to review the rules in Texas Administrative Code, Title 4, Part 13, Chapter 225 (General Provisions), Chapter 226 (Requirements for Certification by the Board), Chapter 227 (Requirements for Certified and Insured Prescribed Burn Managers), Chapter 228 (Procedures for Certified and Insured Prescribed Burn Managers), Chapter 229 (Continuing Fire Training), and Chapter 230 (Lead Burning Instructor Requirements). This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Board along with the Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Danielle Mitchell, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at Danielle.Mitchell@TexasAgriculture.gov.

The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rules section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to amendment or repeal, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202202858
Skyler Shafer
Assistant General Counsel
Prescribed Burning Board
Filed: August 1, 2022



Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board (Board) proposes to review and consider for readoption, revision, or repeal Chapter 280 Therapeutic Optometry, in its entirety.

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

During the review process, the Board may determine whether a specific rule requires amendments to refine the Board's rules that govern the certification and practice of therapeutic optometry; whether the rules reflect current practice interpretations; whether the rules reflect current procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period before final adoption or repeal.

Comments on the review of Chapter 280 Therapeutic Optometry, may be submitted to Texas Optometry Board, Attn: Kelly Parker at 1801 Congress Avenue, Suite 9.300, Austin, Texas 78701 or Kelly.parker@tob.texas.gov. The deadline for comments is thirty days after the date this notice is published in the *Texas Register*.

TRD-202202849
Kelly Parker
Executive Director
Texas Optometry Board
Filed: July 29, 2022



Adopted Rule Reviews

Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) adopts the four-year review of its rules in Texas Administrative Code, Title 34, Part 3 Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51. TRS conducted its review in accordance with the requirements set forth in § 2001.039 of the Government Code. TRS received no comments on its proposed review, which was published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3277).

Relating to the review of Chapter 21, TRS finds that the reasons for adopting Chapter 21 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 23, TRS finds that the reasons for adopting Chapter 23 continue to exist and readopts the rules at this time without changes. At a later date, §§23.1, 23.7 and 23.8 will be

amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 25, TRS finds that the reasons for adopting Chapter 25 continue to exist and readopts the rules at this time without changes. At a later date, §§25.4, 25.6, 25.21, 25.25, 25.31, 25.35, 25.36, 25.123, 25.131, 25.152, and 25.172 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 27, TRS finds that the reasons for adopting Chapter 27 continue to exist and readopts the rules at this time without changes. At a later date, §27.6, will be amended in a separate rulemaking proceeding in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 29, TRS finds that the reasons for adopting Chapter 29 continue to exist and readopts the rules at this time without changes. At a later date, §§29.9, 29.11, and 29.56 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 31, TRS finds that the reasons for adopting Chapter 31 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 33, TRS finds that the reasons for adopting Chapter 33 continue to exist and readopts the rules without changes. At a later date, §33.6, will be amended in a separate rulemaking proceeding in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 35, TRS finds that the reasons for adopting Chapter 35 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 39, TRS finds that the reasons for adopting Chapter 39 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 41, TRS finds that the reasons for adopting the rules under Subchapter A (relating to Retiree Health Care Benefits (TRS-Care)) and Subchapter C (relating to Texas School Em-

ployees Group Health (TRS-Activecare)) continue to exist and readopts those rules without changes. The Board also finds that the reasons for adopting the rules under Subchapter B of Chapter 41 (relating to Long-Term Care, Disability and Life Insurance) no longer exist and, therefore, at a later date, §§41.15 - 41.20 will be repealed in a separate rulemaking proceeding in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 43, TRS finds that the reasons for adopting Chapter 43 continue to exist and readopts the rules at this time without changes. At a later date and in a separate rulemaking proceeding in accordance with the Texas Administrative Procedure Act, Chapter 43 will be amended or repealed and readopted to reorganize the chapter.

Relating to the review of Chapter 47, TRS finds that the reasons for adopting Chapter 47 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 49, TRS finds that the reasons for adopting Chapter 49 continue to exist and readopts the rules without changes. At a later date, §49.2 will be amended in a separate rulemaking proceeding in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 51, TRS finds that the reasons for adopting Chapter 51 continue to exist and readopts the rules at this time without changes. At a later date, §51.1 and §51.2 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 3 Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51.

TRD-202202847

Brian Guthrie

Executive Director

Teacher Retirement System of Texas

Filed: July 29, 2022



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Aquaphase, Inc. v. Texas Commission on Environmental Quality*; Cause No. D-1-GN-21-005500; in the 200th District Court of Travis County, Texas

Background: On August 11, 2021, the Texas Commission on Environmental Quality ("TCEQ") issued an administrative order ("Order") finding that certain parties, including Aquaphase, Inc., were potentially responsible for the solid waste, hazardous substances, pollutants, and other contaminants at the McBay Oil and Gas State Superfund Site (the "Site"), a former oil refinery and oil reclamation plant located on a 20.32-acre tract on FM 1272, two miles west of the intersection with FM 2968 (North Olive Street), near Grapeland, Houston County, Texas. TCEQ's Order required Aquaphase, Inc., and other potentially responsible parties to reimburse all costs associated with TCEQ's cleanup of the Site, which remain to be collected. On September 20, 2021, Aquaphase, Inc. filed this appeal of TCEQ's Order.

Proposed Settlement: The parties propose an Agreed Final Judgment, which provides for an award to TCEQ of \$900.00 as reimbursement for TCEQ's response cost and \$100.00 in attorney's fees. The State, on behalf of TCEQ, will continue to litigate this matter with other potentially responsible parties who were named in TCEQ's Order.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; phone (512) 463-2012; facsimile (512) 320-0911; email: Tyler.Ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202202867
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: August 1, 2022

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/08/22 - 08/14/22 is 18% for Consumer/Agricultural/Commercial₂ credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/08/22 - 08/14/22 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009₃ for the period of 08/01/22 - 08/31/22 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 08/01/22 - 08/31/22 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.

₃ For variable rate commercial transactions only.

TRD-202202885

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 2, 2022

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 13, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the 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 13, 2022**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: AAREY COLLONEY, INCORPORATED dba Check Grocery Store; DOCKET NUMBER: 2022-0417-PST-E; IDENTIFIER: RN101757391; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(g)(1)(A) and TWC, §26.3475(c)(2), by failing to ensure the underground storage tank (UST) system's spill prevention equipment and containment sumps used for interstitial monitoring are operating properly and will prevent releases to the environment; and 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, and failing to monitor each pressurized pipe installed on or after January 1, 2009, for releases at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: \$5,227; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Balcones Resources, Incorporated; DOCKET NUMBER: 2022-0411-MLM-E; IDENTIFIER: RN111349312; LOCATION: Taylor, Williamson County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §37.921(a) and §328.5(d), by failing to establish and maintain financial assurance for closure of the facility that stores combustible materials outdoors; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR05FB35, Part III, Sections A.1(a), A.2, A.5, B.3(c), and D.1(c), by failing to maintain a complete stormwater pollution prevention plan; 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; and 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan and make it available to the local fire prevention authority; PENALTY: \$8,494; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: CHALK BLUFF WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-0464-PWS-E; IDENTIFIER: RN101441459; LOCATION: Waco, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(II), (ii) and (iv), (B)(iii), (iv), and (v), (D)(i), (ii), and (E)(iv)(ix), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$2,050; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Circle K Stores Incorporated; DOCKET NUMBER: 2022-0369-AIR-E; IDENTIFIER: RN102438504; 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.

(5) COMPANY: Circle K Stores Incorporated; DOCKET NUMBER: 2022-0378-AIR-E; IDENTIFIER: RN101695260; 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.

(6) COMPANY: City of Mount Calm; DOCKET NUMBER: 2022-0421-PWS-E; IDENTIFIER: RN101391662; LOCATION: Mount Calm, Hill County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.45(f)(1), by failing to make a water purchase contract available to the ED in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Silverton; DOCKET NUMBER: 2022-0474-PWS-E; IDENTIFIER: RN102314796; LOCATION: Silverton, Briscoe County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: DAWSON RECYCLING, INCORPORATED; DOCKET NUMBER: 2022-0410-MSW-E; IDENTIFIER: RN104481221; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; and 30 TAC §332.8(b)(1), by failing to maintain the setback distance of at least 50 feet from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product; PENALTY: \$5,938; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: Franklin County; DOCKET NUMBER: 2022-0370-AIR-E; IDENTIFIER: RN111415626; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: caterpillar track loader; RULES VIOLATED: 30 TAC §114.20(a) and Texas Health and Safety Code, §382.085(b), by failing to maintain the system or device used to control emissions from the motor vehicle in good operable condition; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: G. P. Transport, Incorporated; DOCKET NUMBER: 2022-0439-WQ-E; IDENTIFIER: RN111428736; LOCATION: Ingle-side, San Patricio County; TYPE OF FACILITY: aggregate production operation; 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 industrial activities; and 30 TAC §342.25, by failing to register the site as an aggregate production operation no later than the tenth business day before the beginning date of regulated activities; PENALTY: \$12,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(11) COMPANY: MANTHA 2111 INC dba SOUTH CENTRAL 1ST GAS; DOCKET NUMBER: 2022-0014-PST-E; IDENTIFIER: RN101433225; LOCATION: Dallas, Dallas 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 in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Mirasaad Mousavijam dba East Point Market; DOCKET NUMBER: 2022-0407-PST-E; IDENTIFIER: RN102394392; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 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; PENALTY: \$9,080; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2915; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(13) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2022-0372-IWD-E; IDENTIFIER: RN100209949; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: oil and gas facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and National Pollutant Discharge Elimination System Permit Number TX0005886, TCEQ Permit Number WQ0005353000, Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$9,300; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Oscar Orduno, Incorporated; DOCKET NUMBER: 2022-0400-AIR-E; IDENTIFIER: RN111454153; LOCATION: Austin, Travis County; TYPE OF FACILITY: portable cement silos construction site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(15) COMPANY: Pilgrim's Pride Corporation; DOCKET NUMBER: 2019-1440-IWD-E; IDENTIFIER: RN102184041; LOCATION:

Mount Pleasant, Titus 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 (TPDES) Permit Number WQ0003017000, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$58,587; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$29,294; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Ravi Bhasin dba Mr. Minit Food Mart; DOCKET NUMBER: 2022-0434-PST-E; IDENTIFIER: RN101557759; LOCATION: Commerce, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Sherman/Grayson Hospital, LLC dba Wilson N Jones Medical Center; DOCKET NUMBER: 2022-0416-PST-E; IDENTIFIER: RN100570753; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: emergency generator facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Courtney Gooris, (817) 588-5863; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Tony McLarry; DOCKET NUMBER: 2022-0486-WQ-E; IDENTIFIER: RN111204095; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: aggregate production operation; 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 industrial activities; and 30 TAC §342.25(b), by failing to register the site as an aggregate production operation no later than the tenth business day before the beginning date of regulated activities; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: William Donald Smith dba Kingmont Mobile Home Park; DOCKET NUMBER: 2022-0492-PWS-E; IDENTIFIER: RN101283331; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(h)(1), by failing to provide sufficient power to meet the capacity requirements in accordance with the affected Facility's approved Emergency Preparedness Plan; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$1,245; ENFORCEMENT COORDINATOR: Ecko Beggs, (512) 239-2905; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Wood Acres Properties LLC.; DOCKET NUMBER: 2022-0393-PWS-E; IDENTIFIER: RN101237170; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: public water

supply; RULE VIOLATED: 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; PENALTY: \$1,650; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202202879

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 2, 2022



Notice of Correction to Agreed Order Number 6

In the June 17, 2022, issue of the *Texas Register* (47 TexReg 3573), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 6, for INGENIA POLYMERS USGC, INCORPORATED, Docket Number 2022-0429-MLM-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2022-0429-WQ-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202202880

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 2, 2022



Notice of Correction to Agreed Order Number 8

In the February 25, 2022, issue of the *Texas Register* (47 TexReg 993), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 8, for Ragle Incorporated dba Ragle and STRIPING TECHNOLOGY, LP, Docket Number 2021-0701-IHW-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "STRIPING TECHNOLOGY, L.P."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202202881

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 2, 2022



Notice of Hearing: Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP SOAH Docket No. 582-22-02856 TCEQ Docket No. 2022-0326-MWD Permit No. WQ0016003001

APPLICATION.

Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP, 4801 West Lovers Lane, Dallas, Texas 75209, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new

Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016003001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day.

The facility will be located approximately 0.4 miles northwest from the intersection of North Murphy Road and Rolling Ridge Drive, in Collin County, Texas 75002. The treated effluent will be discharged to Maxwell Creek, thence to Muddy Creek, thence to Lake Ray Hubbard in Segment No. 0820 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Maxwell Creek. The designated uses for Segment No. 0820 are primary contact recreation, public water supply, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.616388%2C33.041666&level=12>

In accordance with 30 Texas Administrative Code (TAC) §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 Maxwell 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.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Rita & Truett Smith Public Library, 300 Country Club Road, #300, Wylie, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - August 29, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 161 601 8891

Password: veFQv8

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 601 8891

Password: 872800

Visit the SOAH website for registration at: <http://www.soah.texas.gov/>

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the

proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 20, 2022. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

Further information may also be obtained from Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP at the address stated above or by calling Ms. Ashley Broughton, P.E., Project Manager, LJA Engineering, Inc., at (713) 380-4431.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: July 15, 2022

TRD-202202896

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 3, 2022



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,

which in this case is **September 13, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 13, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: HEAVENIN, INC.; DOCKET NUMBER: 2020-0481-PST-E; TCEQ ID NUMBER: RN102356292; LOCATION: 102 East Parsons Street, Manor, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for review upon request by agency personnel; PENALTY: \$10,500; STAFF ATTORNEY: John S. Mercurief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-202202882

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 2, 2022



Notice of Public Meeting for an Air Quality Permit: Proposed Permit Number 169044L001

APPLICATION. Wilco Aggregates, LLC, 7555 FM 970, Florence, Texas 76527-4323, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 169044L001, which would authorize construction of a Rock Crushing Facility located at 4655 County Road 284, Liberty Hill, Williamson and Travis Counties, Texas 78642. This application was 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/newsource/airpermits-pending/permit-apps>. This application was submitted to the TCEQ on May 10, 2022. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

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:

Monday, August 29, 2022 at 7:00 p.m.

Shooting Star Ranch

1704 County Road 285

Liberty Hill, Texas 78642

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 permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Austin regional office, the Liberty Hill Public Library, 355 Loop 332, Liberty Hill, Williamson County, Texas and the Jonestown Community Library, 18649 Farm-to-Market Road 1431, Suite 10A, Jonestown, Travis County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas. Further information may also be obtained from Wilco Aggregates, LLC at the address stated above or by calling Mrs. Melissa Fitts, Westward Environmental Inc, Vice President, at (830) 249-8284.

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 29, 2022

TRD-202202844
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 29, 2022



Notice of Water Quality Application

The following notice was issued on April 26, 2022.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 30 DAYS OF THE 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. WQ0012078001, recently renewed on October 22, 2021, to correct typographical errors in the Lethal WET limits and in the dilution series. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 9535 Sugarland-Howell Road, in Fort Bend County, Texas 77083.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202202851
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 29, 2022



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 25, 2022, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting; SOAH Docket No. 582-22-0131; TCEQ Docket No. 2019-1607-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Jeval Ventures, Inc. d/b/a Maaco Collision Repair & Auto Painting on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-202202898
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 3, 2022

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Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft July 2022 Update to the WQMP for the State of Texas.

Download the draft July 2022 WQMP Update at https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Please periodically check the following website for updates, in the event the TCEQ Library is closed due to COVID-19 restrictions: https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html.

The WQMP is developed and promulgated in accordance with the requirements of the Clean Water Act, §208, 33 U.S.C. §1288. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on September 13, 2022**.

How to Submit Comments

Comments must be submitted in writing to:

Gregg Easley

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 *or* emailed to Gregg Easley at Gregg.Easley@tceq.texas.gov, but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Mr. Easley at (512) 239-4539 or by email at Gregg.Easley@tceq.texas.gov.

TRD-202202887

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 2, 2022

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affect-

ing the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 11, 2022 to July 15, 2022. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, July 22, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, August 21, 2022.

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Fish and Wildlife Service

Location: The project site is located in the Bahia Grande Unit in the Laguna Atascosa National Wildlife Refuge, approximately 1.1 miles southwest of Laguna Vista, Cameron County, Texas.

Latitude & Longitude (NAD 83): 26.083669, -97.302098

Project Description: The applicant proposes to restore freshwater flows and moderate salinity levels within the Laguna Larga by modifying the existing culvert under SH-100 and excavating an approximate 1.6-mile earthen channel to allow for more complex and ultimately into the Laguna Larga. The total excavated area of the channel would be 10.75 acres that would include 9.34 acres of wetland habitat and 1.41 acres of upland vegetation. A water control structure consisting of an articulated concrete block mat weir would be constructed near the southern terminus of the channel to impound water during low rainfall events and further divert flows into the Laguna Larga during high rainfall events. This would impact 0.25 acre of jurisdictional waters of the U.S. Additionally, there is an existing ditch located to the east of the proposed channel that currently drains north toward SH-100 that would be filled level with the natural ground elevation to prevent flows from draining away from the wetlands complex. This project would also involve 50-foot work areas along the east and west sides of the proposed earthen channel and existing ditch and a portion of the access routes that are primarily located along the upland ridges within the basin.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00420. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

CMP Project No: 22-1355-F2

FEDERAL AGENCY ACTIONS:

Applicant: KBB, INC.

Location: The project site is located in wetlands adjacent to the Corpus Christi Ship Channel and Corpus Christi Bay, northeast of the intersection of Avenue I and Alister Street, in Blocks 34, 47, and 48 within Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.82743, -97.06808

Project Description: The applicant proposes to place fill material into 0.58 acre of wetlands adjacent to Corpus Christi Bay and the Corpus Christi Ship Channel (CCSC) on a 4.79-acre parcel in order to construct two separate pad sites for a mixed-use urban development project that will include a restaurant on the pad site fronting Alister Street (0.52 acre of fill into estuarine wetlands), and boutique hotel venue (0.06 acre of fill into estuarine wetlands) located on the pad site northwest of the existing CVS Pharmacy fronting Avenue G. The applicant states that the proposed project would provide both commercial venues with a direct view of the existing estuarine marsh system so patrons might enjoy the wildlife and bird populations. Both pad sites are designed to

receive and treat urban stormwater discharge, while meeting state and federal water quality standards for its own runoff. The applicant further states that the restaurant and hotel would be connected by an elevated walkway that would have an observation deck and several educational plaques, helping to educate patrons on the local wildlife and birding populations.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2012-00871. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1354-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public

Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202202893

Mark Havens

Deputy Land Commissioner and Chief Clerk

General Land Office

Filed: August 3, 2022



Order Rescinding Temporary Order Suspending Determination of the Line of Vegetation and Suspending Enforcement on Certain Encroachments on the Public Beach

TEXAS GENERAL LAND OFFICE

In Re: Hurricane Laura and § Before the Commissioner of the
Tropical Storm Beta § Texas General Land Office
§ State of Texas

**ORDER RESCINDING TEMPORARY ORDER SUSPENDING DETERMINATION OF THE
LINE OF VEGETATION AND SUSPENDING ENFORCEMENT ON CERTAIN
ENCROACHMENTS ON THE PUBLIC BEACH**

The Commissioner of the Texas General Land Office (Commissioner) makes the following Findings of Fact and Conclusions of Law in support of the rescission of the Temporary Order Suspending Determination of The Line of Vegetation and Suspending Enforcement on Certain Encroachments on the Public Beach (Order) entered March 29, 2021. The Order, in effect in Brazoria County in the Village of Surfside Beach city limits and in Galveston County from the western terminus of the Seawall west to Thirteen Mile Road in the City of Galveston, was issued pursuant to Texas Natural Resources Code (TNRC) §§ 61.0171 and 61.0185.

Findings of Fact

- 1.a Hurricane Laura made landfall at 1:00 a.m. on August 27, 2020 near Cameron, Louisiana, impacting the upper Texas coast. Tropical Storm Beta made landfall at 10:00 p.m. on September 21, 2020 near Matagorda Peninsula. These two meteorological events resulted in a loss in elevation and a loss of vegetation and dunes in both Galveston and Brazoria Counties.a
- 2.a The line of vegetation (LOV) was obliterated within the city limits of the Village of Surfside Beach and on Galveston Island from the western terminus of the seawall to Thirteen Mile Road by storm tidal surges and overwash from Hurricane Laura and Tropical Storm Beta.a
- 3.a On March 29, 2021, the Commissioner issued the Order which suspended determinations of the location of the LOV and set the location of the LOV used for coastal construction permitting purposes at 200 feet from mean low tide for the duration of the Order.a
- 4.a A temporary suspension of determination of the line of vegetation was necessary so local governments could issue permits for beachfront construction in accordance with the local Beach Access and Dune Protection Plans (Plans) while allowing for the natural recovery and stabilization of the beach elevation and dune vegetation.
- 5.a Two growing seasons have taken place since the 2020 storms. GLO staff has monitored the areas affected by the Order and determined that the natural LOV has recovered in areas where the GLO anticipates recovery will take place.a

6.o The GLO has not taken or referred any enforcement actions to remove any houses under TNRCo §61.018 since the 2020 storms.o

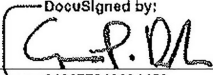
Conclusions of Law

- 1.o The General Land Office has jurisdiction over this matter pursuant to the Open Beaches Act,o Texas Natural Resources Code Chapter 61 and the Dune Protection Act, TNRC Chapter 63. Theo Order was issued pursuant to Texas Natural Resources Code (TNRC) §§ 61.0171 and 61.0185.o
- 2.o Following the issuance of this order, the location of the LOV shall be determined on a case-by-case basis in accordance with TNRC §§ 61.016 and 61.017, either using information submittedo with pending permit applications to local governments in accordance with relevant rules ando applicable local Plans, or using current information obtained by GLO Staff.o

It is accordingly **ORDERED** that:

- 1.o The Commissioner of the Texas General Land Office hereby rescinds the Temporary Ordero Suspending Determination of The Line of Vegetation and Suspending Enforcement on Certaino Encroachments on the Public Beach entered March 29, 2021. The Order was in effect in Brazorio County in the Village of Surfside Beach city limits and in Galveston County from the westerno terminus of the Seawall west to Thirteen Mile Road in the City of Galveston.o
- 2.o Following the issuance of this order, the location of the LOV shall be determined on a case-by-case basis in accordance with TNRC §§ 61.016 and 61.017, either using information submittedo with pending permit applications to local governments in accordance with relevant rules ando applicable local Plans, or using current information obtained by GLO Staff.o
- 3.o Notice of the rescission of the Order shall be:o
 - a.o posted on the Internet website of the GLO;o
 - b.o published by the GLO as a miscellaneous document in the *Texas Register*;
 - c.o filed for record by the GLO in the real property records of the county in which the areas ofo beach subject to this order are located; ando
 - d.o sent to the governing body of each local government to which this order applies.o

SIGNED this day 8/3/2022, in Austin, Texas.

DocuSigned by:


GEORGE P. BUSH 840877346994453...
Commissioner, General Land Office

TRD-202202897
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: August 3, 2022

◆ ◆ ◆
Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application, Public Safety Office (PSO)

The Governor's Public Safety Office (PSO) is planning to apply for federal fiscal year (FFY) 2022 formula funds under the Edward Byrne Justice Assistance Grant (JAG) program administered by the U.S. Department of Justice, Bureau of Justice Assistance. The FFY 2022 allocation to Texas is \$14.9 million.

PSO proposes to use the FFY 2022 award to fund initiatives that target border security, violent crimes, organized criminal activity, improve technology, substance abuse diversion programs and offender reentry into the community.

Comments regarding the proposed use of JAG funds should be submitted in writing within 30 days from the date of this announcement in the *Texas Register*. Comments may be submitted to the attention of Ms. Alyssa Smith, Public Safety Office (PSO), Texas Office of the Governor, by email at Alyssa.Smith@gov.texas.gov or by mail to the Office of the Governor, Public Safety Office, Post Office Box 12428, Austin, Texas 78711. You may also request a copy of the application upon its completion from Ms. Smith.

TRD-202202866
Andrew Friedrichs
Director, Public Safety Grant Programs
Office of the Governor
Filed: August 1, 2022

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Amendments to Program Rules for School Health and Related Services

Monday, August 22, 2022

1:00 p.m.

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comments on the proposed Title 1, Texas Administrative Code (TAC) §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation for the School Health and Related Services (SHARS) program. The hearing will be held in compliance with Texas Government Code (TGC) §2001.029(b), which requires a state agency to grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by (1) at least 25 persons; (2) a governmental subdivision or agency; or (3) an association having at least 25 members.

Virtual Public Hearing Access. This public hearing will be conducted online using GoToWebinar only. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link: <https://attendee.gotowebinar.com/register/6571640685000375054>. The webinar ID is: 985-985-067. There is not a physical location for this public hearing.

This public hearing will be archived. Members of the public may view a recording of this meeting at <https://texashsmmeetings.org/HHSWeb-cast> after the meeting.

Proposal. HHSC proposes amendments to §354.1341, concerning Benefits and Limitations; and §354.1342, concerning Conditions for Participation for the School Health and Related Services (SHARS) program. The proposed rules were published in the August 5, 2022, issue of the *Texas Register*.

Background and Purpose. 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 United States Code (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. 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.

Agenda.

1. Call to order
2. Public hearing to receive comments from interested persons on proposed rule amendments to:
 - a. §354.1341, concerning Benefits and Limitations; and
 - b. §354.1342, concerning Conditions for Participation for the School Health and Related Services (SHARS) program.
3. Adjourn

Public Comment or Testimony. HHSC welcomes public comment pertaining to proposed amendments to §354.1341 and §354.1342 of the Texas Administrative Code. Members of the public who would like to provide public comment may choose from the following options:

Oral Comments Provided Virtually. Members of the public must pre-register to provide oral comments virtually during the public hearing by https://texashsmmeetings.org/SHARS_PCReg_Aug2022 no later than 9:00 a.m., August 22, 2022. Please mark the correct box on the Public Comment Registration form and provide your name, either the organization you are representing or that you are speaking as a private citizen, and your direct phone number. If you have completed the Public Comment Registration form, you will receive an email the day before the public hearing with instructions for providing virtual public comment. Public comment is limited to three minutes. Each speaker providing oral public comments virtually must ensure their face is visible and their voice audible to the other participants while they are speaking. Each speaker must state their name and on whose behalf they are speaking (if anyone). If you pre-register to speak and wish to provide a handout before the public hearing, please submit an electronic copy in accessible PDF format that will be distributed to the appropriate HHS staff. Handouts are limited to two pages (paper size: 8.5" by

11", one side only). Handouts must be emailed to MedicaidBenefitRequest@hhsc.state.tx.us immediately after pre-registering, but no later than 9:00 a.m., August 22, 2022, and include the name of the person who will be commenting. Do not include health or other confidential information in your comments or handouts. Staff will not read handouts aloud during the public hearing, but handouts will be provided to the appropriate HHS staff. Members of the public may also use the GotoWebinar Q&A section to submit a request to provide oral public comment only. The request must contain your name, either the organization you are representing or that you are speaking as a private citizen, and your direct phone number. Do not include confidential information or protected health information in comments.

Written Comments. Written comments regarding the proposed rule amendment may be submitted instead of, or in addition to, oral testimony until 10:00 p.m. the day of the hearing (August 22, 2022). Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, or e-mail (see below for contact information).

U.S. Mail, Overnight mail, or special delivery mail

Texas Health and Human Services Commission

Attention: Office of Policy, Medicaid and CHIP Services

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Phone number for package delivery: (512) 438-2935

Email

MedicaidBenefitRequest@hhsc.state.tx.us

Preferred Communication. The preferred method of communication with HHSC related to this public hearing is e-mail or phone if possible. This will help facilitate a quicker response.

This hearing will be open to the public. No reservations are required and there is no cost to attend this hearing.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Jennifer Daniels, SHARS Policy Analyst, at (512) 438-2935 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-202202891

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 2, 2022



Updated Public Notice: Inclusion of American Rescue Plan Act of 2021 Into CHIP State Plan

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 22-0031 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act. This amendment is identical to Amendment 22-0003 and replaces the previously announced Amendment 22-0003 which served the same purpose. This update is intended to provide notice of the change to the Transmittal Number from 22-0003 to 22-0031.

As a reminder, the purpose of this amendment is to update the CHIP State Plan to indicate compliance with the American Rescue Plan Act (ARPA) of 2021 provisions that require states to cover treatment (including treatment of a condition that may seriously complicate

COVID-19 treatment), testing, and vaccinations for COVID-19 without cost-sharing in CHIP, effective March 11, 2021, through the last day of the first calendar quarter that begins one year after the last day of the COVID-19 emergency period.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-2264 or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be made available for review at HHSC local offices.

TRD-202202888

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 2, 2022



Texas Lottery Commission

Scratch Ticket Game Number 2432 "Special Edition Super Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2432 is "SPECIAL EDITION SUPER LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2432 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2432.

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: THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE COWBOY HAT SYMBOL, THE COWBOY SYMBOL, THE CHILE PEPPER SYMBOL, THE COVERED WAGON SYMBOL, THE CACTUS SYMBOL, THE CHERRIES SYMBOL, THE CORN SYMBOL, THE FIRE SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONESTAR SYMBOL, THE MOCKINGBIRD SYMBOL, THE MORTAR PESTLE SYMBOL, THE OIL RIG SYMBOL, THE MARACAS SYMBOL, THE MOONRISE SYMBOL, THE NEWSPAPER SYMBOL, THE PIÑATA SYMBOL, THE ROADRUNNER SYMBOL, THE SHOES SYMBOL, THE SPEAR SYMBOL, THE PECAN TREE SYMBOL, THE RATTLESNAKE SYMBOL, THE SADDLE SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$500, \$5,000 and \$100,000.

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. 2432 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COWBOY SYMBOL	THECOWBOY
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE CACTUS SYMBOL	THE CACTUS
THE CHERRIES SYMBOL	THECHERRIES
THE CORN SYMBOL	THE CORN
THE FIRE SYMBOL	THE FIRE
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONESTAR SYMBOL	THELONESTAR
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE OIL RIG SYMBOL	THEOILRIG
THE MARACAS SYMBOL	THEMARACAS
THE MOONRISE SYMBOL	THEMOONRISE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE PIÑATA SYMBOL	THE PIÑATA
THE ROADRUNNER SYMBOL	THEROADRUNNER

THE SHOES SYMBOL	THE SHOES
THE SPEAR SYMBOL	THE SPEAR
THE PECAN TREE SYMBOL	THEPECANTREE
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE SADDLE SYMBOL	THESADDLE
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$5,000	FVTH
\$100,000	100TH

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 (2432), 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: 2432-0000001-001.

H. Pack - A Pack of the "SPECIAL EDITION SUPER LOTERIA" Scratch Ticket Game contains 075 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 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 "SPECIAL EDITION SUPER LOTERIA" Scratch Ticket Game No. 2432.

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. Each Scratch Ticket contains exactly fifty-two (52) Play Symbols. A prize winner in the "SPECIAL EDITION SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: **PLAYBOARD:** 1) The player completely scratches the CALLER'S CARD area to reveal 21 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. **BONUS GAMES:** The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 4 symbols in the same GAME, the player wins the PRIZE for the GAME. **TABLA DE JUEGO:** 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 21 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. **JUEGOS DE BONO:** El jugador SOLAMENTE raspa los símbolos de los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 4 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-two (52) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-two (52) Play Symbols under the Latex Overprint on the

front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-two (52) 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: A Ticket can win up to six (6) times in accordance with the approved 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. PLAYBOARD/TABLA DE JUEGO: There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD/TABLA DE JUEGO: At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. PLAYBOARD/TABLA DE JUEGO: No matching Play Symbols are allowed on the PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAMES/JUEGOS DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPECIAL EDITION SUPER LOTERIA" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$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 \$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 "SPECIAL EDITION SUPER LOTERIA" Scratch Ticket Game prize of \$5,000 or \$100,000, 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 "SPECIAL EDITION SUPER LOTERIA" 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 "SPECIAL EDITION SUPER LOTERIA" 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 "SPECIAL EDITION SUPER LOTERIA" 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 60,000,000 Scratch Tickets in Scratch Ticket Game No. 2432. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2432 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	7,200,000	8.33
\$10.00	6,000,000	10.00
\$15.00	800,000	75.00
\$20.00	800,000	75.00
\$50.00	800,000	75.00
\$100	250,500	239.52
\$200	41,000	1,463.41
\$500	6,000	10,000.00
\$5,000	150	400,000.00
\$100,000	30	2,000,000.00

*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 3.77. 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. 2432 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. 2432, 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-202202895
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: August 3, 2022



Texas Parks and Wildlife Department

Request for Project Ideas - Natural Resource Restoration Projects

Acting in the Capacity of Membership in the Texas City Y Oil Spill Natural Resource Trustee Council in Certain Regions along the Texas Coast

The Trustees for the Texas City Y Oil Spill Natural Resource Damage Assessment (NRDA) are beginning the process of restoration planning and would like your input regarding natural resource restoration project ideas. This request for project ideas is open for 30 days through September 12, 2022.

The Texas City Y Oil Spill occurred on March 22, 2014, when the bulk carrier Motor Vessel Summer Wind collided with the oil tank-barge Kirby 27706 in Galveston Bay near Texas City, Texas. The barge spilled approximately 168,000 gallons of intermediate fuel oil into lower Galveston Bay and eventually into the Gulf of Mexico. More than 160 miles of Texas shoreline were oiled, with oil coming ashore as far south as Padre Island, Texas.

The impacts of the Texas City Y Oil Spill were evaluated through the NRDA process. Specifically, experts evaluated impacts to shoreline habitats, birds, bottlenose dolphins, and outdoor recreational use. On

January 20, 2022, a \$15.3 million settlement was finalized in Federal District Court to restore natural resources damaged from the Texas City Y Oil Spill.

The natural resource trustees for the Texas City Y Oil Spill are the United States Department of the Interior (DOI) through the United States Fish and Wildlife Service (FWS) and the National Park Service (NPS), the National Oceanic and Atmospheric Administration (NOAA), and the Texas General Land Office (TGLO), the Texas Commission on Environmental Quality (TCEQ), and the Texas Parks and Wildlife Department (TPWD) on behalf of the State of Texas (collectively, the Trustees).

Trust Resources Targeted for Restoration

The Texas City Y Oil Spill Trustees are seeking the public's input on natural resource restoration project ideas that will compensate for the injuries caused by the spill. The Trustees intend to focus our restoration planning on coastal projects along the Texas coast in areas impacted by the spill. Restoration will be for injuries to:

- Coastal shoreline habitats,
- Coastal birds,
- Bottlenose dolphins, and
- Outdoor recreational use.

Submit Your Project Ideas

The Trustees encourage you to submit restoration project ideas through: TexasCityYNRDAR@fws.gov. An optional coversheet for project submissions is available online at https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1071.

In particular, the Trustees are seeking project ideas that:

- have a spatial proximity to the injury (see map: https://www.cerc.usgs.gov/orda_docs/DocHandler.ashx?task=get&ID=7957);
- provide ecological benefits to shoreline habitats, coastal birds, bottlenose dolphins, and compensate for outdoor recreational use injury within the Texas Coastal Zone (<https://www.glo.texas.gov/coast/coastal-management/forms/files/CoastalBoundaryMap.pdf>);
- are technically feasible;
- deliver cost-effective benefits;
- have a reasonable probability of success;
- provide measurable results;
- avoid collateral injury to natural resources;
- do not adversely impact human health and safety;
- are consistent with federal, state, or local laws, regulations, or policies; and
- are not already required by existing laws, regulations, permits, settlements, or enforcement orders, including anticipated requirements such as mitigation requirements of draft permits unrelated to this request for project ideas.

The Trustees request that all project ideas be submitted not later than September 12, 2022. If applicable, please explain how project ideas may be adjusted for scope and identify if a project idea benefits multiple injured resources.

Next Steps

Trustees will review the projects using the criteria listed above and publish a restoration plan(s) evaluating project alternatives. The Trustees

may or may not request additional information from the individual or group that proposed specific project ideas. The Trustees may choose to adopt or modify any proposal and implement any selected project with or without the project proponent. The Trustees may also develop restoration project ideas or may combine or modify project ideas submitted by the public to better meet restoration priorities.

The Trustees will give the public an opportunity to review and provide input on any draft restoration plans, including on those projects proposed for implementation, in accordance with the Oil Pollution Act and the National Environmental Policy Act. After any public comment period ends, the Trustees will review, consider, and incorporate public comments, as appropriate, before adopting and releasing any final restoration plans.

Thank you for your engagement in this process. We look forward to considering your restoration project ideas.

TRD-202202865

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: August 1, 2022

Public Utility Commission of Texas

Notice of Application for True-Up of 2019 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 1, 2022, for true-up of 2019 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Big Bend Telephone Company, Inc. for True-Up of 2019 Federal Universal Service Fund Impacts to Texas Universal Service Fund, Docket Number 53921.

The Application: Big Bend Telephone Company, Inc. filed a true-up in accordance with findings of fact numbers 18 and 19 and ordering paragraphs 2, 3, and 4 of the notice of approval issued in Docket No. 52334. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Big Bend received in Federal Universal Service Fund (FUSF) revenue by \$1,815,557.12 for calendar year 2019. It was estimated that Big Bend would recover \$602,406.85 of the projected FUSF revenue impact from rate increases implemented for the time period. Big Bend's request to recover the remaining \$1,213,150.27 in projected FUSF revenue reductions from the Texas Universal Service Fund (TUSF) was approved. Based on the data, calculations, supporting documentation and affidavits included with the application, Big Bend stated that the projected FUSF impacts filed last year for 2019 are equivalent to the actual figures for 2019. Therefore, no TUSF reconciliation needs to be made as a result of this true-up.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53921.

TRD-202202886

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Texas State Soil and Water Conservation Board

Request for Proposals for the Fiscal Year 2023 Clean Water Act §319(h) Nonpoint Source Grant Program

PROPOSALS DUE: September 23, 2022

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the *Texas NPS Management Program*. The *Texas NPS Management Program* is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at <https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program>.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: (1) implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans); (2) surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs); (3) technical assistance to landowners for conservation planning; (4) public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups; and (5) monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

Proposals Requested

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration, and education projects within the boundaries of impaired or threatened watersheds. The Texas Integrated Report of Surface Water Quality describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality consistent with the goals, objectives, and priority watersheds and aquifers identified in Appendix C and D of the *Texas NPS Management Program*. Up to \$1 million of the TSSWCB's FY2023 CWA §319(h) grant will be eligible for award under this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for available funding.

Applicants that submit project proposals should, where applicable, focus on interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and highlight public participation. Examples of project proposals previously funded by TSSWCB are available at:

<https://www.tsswcb.texas.gov/index.php/programs/texas-nonpoint-source-management-program/active-nonpoint-source-grant-projects>.

Additionally, applicants are encouraged to review EPA's Grant Guidelines for the NPS Program available at <https://www.epa.gov/nps/319-grant-program-states-and-territories>.

Individual Award Amounts

This RFP does not set a maximum or minimum award amount for individual projects; however, project funding generally ranges between \$100,000 and \$400,000 for a two to three-year project.

Reimbursement and Matching Requirements

The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement, however proposals that do not meet the minimum matching requirement will still be considered. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The match must be from non-federal sources (may be cash or in-kind services) and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Required Reporting and QAPP

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental data collection, generation or compilation component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and the EPA. Project budgets and timelines should account for the development and review of QAPPs, final reports, and watershed protection plans. More information on QAPPs and the *TSSWCB Environmental Data Quality Management Plan* is available at <https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/environmental-data-quality-management>.

TSSWCB PRIORITIES

For this FY2023 RFP, the following project priorities have been identified. Proposals that do not focus on these priorities are still welcomed but may score lower than those that focus on the priorities.

Priority Project Activities

- Implement WPPs and TMDL I-Plans (see priority areas listed below).
- WPP development initiatives (see Appendix C in *Texas NPS Management Program*), which include activities such as the formation of watershed groups or water quality data collection and analysis.
- Implement components of the *Texas Coastal NPS Pollution Control Program* in the Coastal Management Zone (<https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/coastal-nonpoint-source-pollution-control-program>).
- Support use of federal Farm Bill Programs and Initiatives (National Water Quality Initiative (NWQI)).
- Demonstration projects and/or development/delivery of education programs.

Priority Areas for WPP Implementation Projects

WPPs

- Arroyo Colorado
- Leon River
- Geronimo and Alligator Creeks
- Lake Lavon
- Plum Creek (Segment 1810)
- Lampasas River

- Double Bayou
- San Fernando and Petronila
- Mid and Lower Cibolo

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations (for profit), may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS AND AWARD

Review Process

TSSWCB will review each proposal that is submitted by the deadline by an eligible organization.

--At any time during the review process, a TSSWCB staff member may contact the applicant for additional information.

--All areas of the budget are subject to review and approval by TSSWCB.

Scoring

Reviewed proposals will be scored and ranked based on the evaluation and ranking criteria included in this RFP on pp. 19-20. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. All grant awards will be contingent on the selected applicant's return of a grant contract provided by TSSWCB which will incorporate all applicable state and federal contracting requirements.

Grant Award Decisions

During the grant review and award process, the TSSWCB may take into consideration other factors including whether the applicant has demonstrated acceptable past performance as a grantee in areas related to programmatic and financial stewardship of grant funds.

TSSWCB may choose to award a grant contract from a different TSSWCB funding source than that for which the applicant applied.

TSSWCB is not obligated to award a grant at the total amount requested and/or within the budget categories requested. TSSWCB reserves the right to make awards at amounts above and/or below the stated funding levels. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the TSSWCB. The decisions made by the TSSWCB are final and are not subject to appeal.

Funding Priority

TSSWCB reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions.

Grant Award Notification

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and

finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. TSSWCB may utilize a grant contract document and/or a notice of grant document once a decision is made to award a grant. The applicant will be given a deadline to accept the grant award and to return the appropriate document to the TSSWCB within the time prescribed by the TSSWCB. An applicant's failure to return the signed document to the TSSWCB within the prescribed time period will be construed as a rejection of the grant award, and the TSSWCB may de-obligate funds.

Special Conditions

The TSSWCB may assign special conditions at the time of the award. Until satisfied, these special conditions may affect the applicant's ability to receive funds. If special conditions are not resolved, the TSSWCB may de-obligate funds up to the entire amount of the grant award.

ELIGIBLE BUDGET CATEGORIES

- Personnel
- Fringe Benefits
- Travel
- Equipment
- Supplies
- Contractual
- Construction
- Other
- Indirect

INELIGIBLE COSTS

Ineligible costs include, but are not limited to:

- Contracting for grant activities that would otherwise be provided by employees of the grantee's organization
- Payment for lobbying
- Purchasing food and beverages except as allowed under Texas State Travel Guidelines
- Purchasing or leasing vehicles
- Purchasing promotional items or recreational activities
- Paying for travel that is unrelated to the direct delivery of services that supports the project funded under this RFP
- Paying consultants or vendors who participate directly in writing a grant application
- Paying any portion of the salary or any other compensation for an elected government official
- Payment of bad debt, fines or penalties
- Purchasing any other products or services the TSSWCB identifies as inappropriate or unallowable
- Any unallowable costs set forth in state or federal cost principles
- Any unallowable costs set forth in the NPS Grant Program.

STATE AND FEDERAL REQUIREMENTS

All applicants should review and be familiar with the TSSWCB administrative rules governing Nonpoint Source Grant Program. These rules are published in Texas Administrative Code, Title 31, Part 17, Chapter 523, § 523.1(b)(2):

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=17&ch=523&rl=1](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=17&ch=523&rl=1)

In addition to the TSSWCB's administrative rules, applicants should be familiar with the Uniform Grant Management Standards (UGMS) and relevant Code of Federal Regulations (CFR) that relate to state, and if applicable, federal grant funding. UGMS can be found at: <https://comptroller.texas.gov/purchasing/grant-management/>. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 can be found at: <http://www.ecfr.gov>.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit <https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program> or contact Jana Lloyd at (254) 773-2250 ext. 224. All proposals must be submitted electronically (MS® Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to jlloyd@tsswcb.texas.gov. Proposals must be received electronically by 5:00 p.m. CDT, September 23, 2022 to be considered.

FY2023 GRANT TIMELINE

Issuance of RFP: August 12, 2022

Deadline for Submission of Proposals: September 23, 2022

Proposal Evaluation by TSSWCB: October-November 2022

Notification of Selected Proposals/Unsuccessful applicants: December 2022

Work with applicants to Finalize Selected Proposals: November- December 2022

Review of Selected Proposals by EPA: January 2023

Submit Grant Application to EPA: May 2023

Contract Award: August 2023

Anticipated Project Start Date: September 1, 2023

TRD-202202845

Liza Parker

Policy Analyst/Legislative Liaison

Texas State Soil and Water Conservation Board

Filed: July 29, 2022

◆ ◆ ◆

Supreme Court of Texas

Final Approval of Amendments to Texas Rules of Appellate Procedure 38.1(a), 52.3(a), 53.2(a), and 55.2(a) (Joint Order, Court of Criminal Appeals Misc. Docket No. 22-005)

Supreme Court of Texas

Misc. Docket No. 22-9057

Final Approval of Amendments to Texas Rules of Appellate Procedure 38.1(a), 52.3(a), 53.2(a), and 55.2(a)

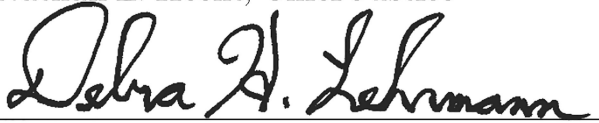
ORDERED that:

1. On April 8, 2022, Misc. Dkt. No. 22-9029, the Court 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 Court made revisions to the rules. 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.



Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice



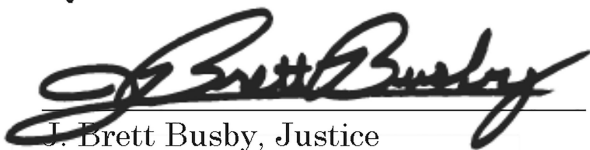
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



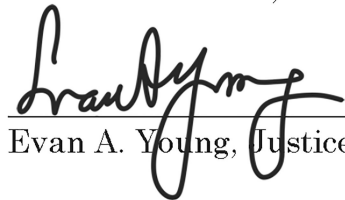
J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

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

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The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

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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-202202833

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: July 27, 2022



Workforce Solutions for the Heart of Texas

Request for Proposal (RFP) 13220301 Lease Space for Workforce Solutions Center in Waco, McLennan County, Texas

The Heart of Texas Workforce Development Board, Inc. (HOTWDB) is soliciting proposals for lease space for a workforce solutions center to be located in Waco, McLennan County, Texas. The purpose of this Request for Proposal is to identify the best site to provide workforce service programs in McLennan County. Proposals are due on September 1, 2022, by 1:00 p.m. Any proposal received after that time and date will not be considered.

For bid specifications, the Request for Proposal will be available at www.hotworkforce.com.

The Heart of Texas Workforce Development Board, Inc. reserves the right to reject any and/or all bids, and to make awards as they may appear to be advantageous to HOTWDB.

The Heart of Texas Workforce Development Board, Inc. provides workforce services to six counties; Bosque, Falls, Freestone, Hill, Limestone and McLennan.

The Heart of Texas Workforce Development Board, Inc. is an equal opportunity employer. Programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) (800) 735-2989/(800) 735-2988 (voice).

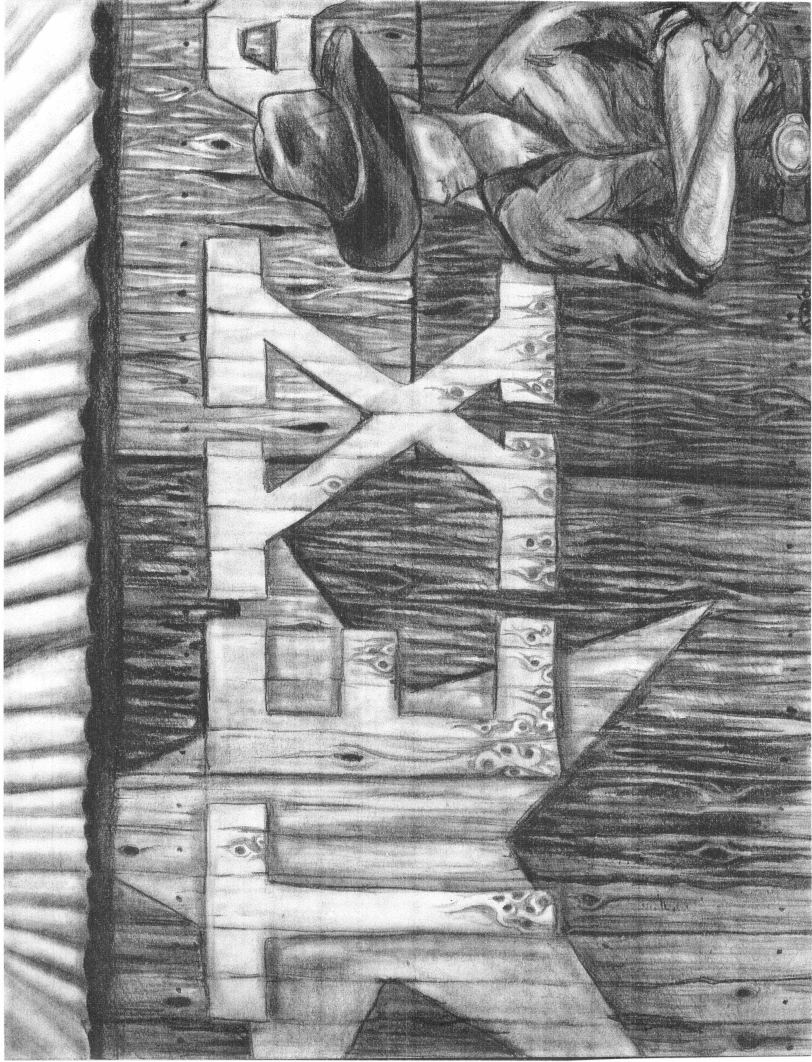
TRD-202202859

Anthony Billings
Executive Director

Workforce Solutions for the Heart of Texas

Filed: August 1, 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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