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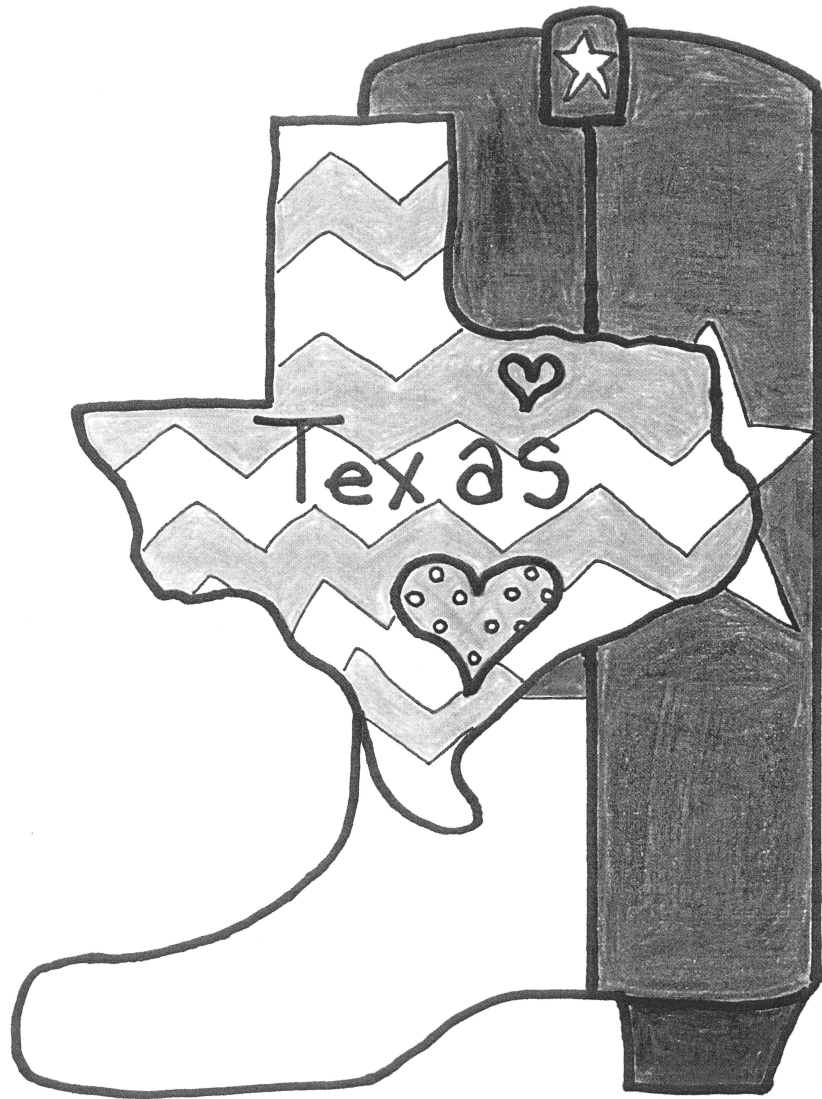
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THE GOVERNOR

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

Appointments

Appointments for August 15, 2022

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2025, Lance S. Etcheverry of Athens, Texas (replacing Brendan Scher of Austin who resigned).

Appointments for August 18, 2022

Appointed as Judge of the 478th Judicial District Court, Bell County, pursuant to HB 3774, 87th Legislature, Regular Session, for a term until December 31, 2022, or until his successor shall be duly elected and qualified, Wade N. Faulkner of Salado, Texas.

Appointments for August 23, 2022

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for terms to expire August 22, 2024, Charles E. "Charlie" Holder of Vidor, Texas.

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for terms to expire August 22, 2024, William G. "Will" Jenkins, III of Beaumont, Texas.

Appointments for August 24, 2022

Appointed as Justice of the Seventh Court of Appeals, Place 3, for a term until December 31, 2022, or until his successor shall be duly elected and qualified, Alex L. Yarbrough of Amarillo, Texas (replacing Justice Patrick A. Pirtle of Amarillo who resigned).

Greg Abbott, Governor

TRD-202203230



Proclamation 41-3922

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor.

However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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 15th day of August, 2022.

Greg Abbott, Governor

TRD-202203197



Proclamation 41-3923

TO ALL TO WHOM THESE PRESENTS SHALL COME:

BE IT KNOWN THAT I, GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS, DO HEREBY ORDER A GENERAL ELECTION to be held throughout the State of Texas on the first TUESDAY NEXT AFTER THE FIRST MONDAY IN NOVEMBER, 2022, being the 8th day of NOVEMBER, 2022; and

NOTICE THEREOF IS HEREBY GIVEN to the people of Texas and to the COUNTY JUDGE of each county who is directed to cause said election to be held at each precinct in the county on such date for the purpose of electing state and district officers, members of the Texas Legislature, and members of the United States Congress, as required by Section 3.003 of the Texas Election Code.

ATTESTED BY:

John B. Scott

Secretary of State

IN TESTIMONY WHEREOF, I have hereto 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 19th day of August, 2022.

Greg Abbott, Governor



Proclamation 41-3924

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster. Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 20th day of August, 2022.

Greg Abbott, Governor



Proclamation 41-3925

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 20th day of August, 2022.

TRD-202203200



EMERGENCY RULES

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

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 35. EMERGENCY RULES

SUBCHAPTER A. TEXAS WINDSTORM INSURANCE ASSOCIATION EMERGENCY RULES

28 TAC §35.4

The Commissioner of Insurance adopts new 28 TAC §35.4, concerning Catastrophe Insurance Coverage, on an emergency basis, effective August 23, 2022. The emergency adoption is necessary to ensure certain property owners in the catastrophe area of the Texas seacoast territory have reasonable access to coverage through the Texas Windstorm Insurance Association (TWIA).

REASONED JUSTIFICATION. On August 8, 2022, Weston, a Florida property and casualty insurance company licensed in Texas, was declared insolvent. Weston was placed into liquidation by the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida. Weston has over 30,000 policyholders in Texas, including over 23,000 in the TWIA catastrophe area. These policyholders' coverage will end no later than 12:01 a.m. on September 7, 2022, leaving these policyholders without windstorm coverage during Texas' hurricane season.

The Weston policyholders can apply for coverage through TWIA, but two provisions in TWIA's Plan of Operation may make it difficult for them to obtain adequate coverage in a timely manner: (1) the prohibition on TWIA's acceptance of new or increased coverage applications once a hurricane is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude (the storm moratorium); and (2) the requirement that coverage will generally become effective on the date TWIA receives both the policy application and the necessary premium payment. 28 TAC §5.4001(d)(2)(E)(ii).

If Weston policyholders were to apply during a storm moratorium, coverage would not go into effect until the moratorium ends; they would not have coverage during the storm. Also, Weston policyholders have already paid Weston for coverage and many do not have the means to pay a second insurance premium right away. This emergency rule addresses these issues and facilitates TWIA in providing windstorm and hail insurance to Weston's Texas policyholders.

The provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and TWIA is tasked with providing an adequate market for such insurance in the sea-

coast territory to those who are unable to obtain that coverage in the private market. Tex. Ins. Code §2210.001.

According to the National Weather Service, the peak hurricane threat for the Texas coast exists from August through September; thus it is likely the storm moratorium will become effective just as Weston's policyholders are submitting applications for TWIA policies. For Weston's current policyholders, and any others who are similarly situated, the new emergency rule will exempt applications from the storm moratorium. This will help avoid any lapses in coverage should a hurricane emerge in the Gulf of Mexico.

The new rule also helps Weston policyholders, and any who are similarly situated, who may need time to be able to pay a second insurance premium. It does so in two ways: by allowing for backdating of coverage and by requiring TWIA to offer an additional payment option.

To obtain a TWIA policy that is backdated to be effective on the date an applicant's private market coverage ended, the applicant must send the application and any binding payment within 60 days of the end of the private market coverage. An applicant can also submit their application and any binding payment before their private market coverage ends, in which case their TWIA policy will be effective when both are sent.

The new rule also requires TWIA to offer an additional payment option. An applicant can bind coverage by paying \$0 for the first 90 days of coverage.

An emergency rule is necessary

Pursuant to Government Code §2001.034 and §2001.036(a)(2), the new rule is adopted on an emergency basis and with an immediate effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

Thousands of Texas property owners will lose their current windstorm coverage on September 7, 2022. And many of those policyholders must look to TWIA for replacement coverage or risk going without it. To go without such coverage, especially during hurricane season, presents an unacceptable threat to these property owners' health, safety, and financial welfare. In addition, if a major storm hits while so many consumers are without coverage, the effect would severely impact the state's economic welfare, impeding the orderly growth and development of the state. See Tex. Ins. Code §2210.001. The new emergency rule is adopted to eliminate two of the biggest barriers to the affected policyholders obtaining new coverage.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Insurance Code §2210.008 and §36.001; and Government Code §2001.034 and §2001.036(a)(2).

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

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

Government Code §2001.034 provides that a state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and the agency states in writing the reasons for its finding.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

§35.4. Catastrophe Insurance Coverage.

(a) The storm moratorium on the Texas Windstorm Insurance Association's (TWIA's) acceptance of catastrophe insurance applications as described in §5.4001(d)(2)(E)(ii) of this title (relating to Plan of Operation) does not apply to applications for coverage of structures for which the following conditions are met:

(1) windstorm and hail insurance for that structure is canceled or nonrenewed by an insurer in the private market; and

(2) the cancellation or nonrenewal is due to the liquidation of the insurer in the private market.

(b) Notwithstanding §5.4001(d)(2)(E)(ii) of this title, if the conditions in subsection (a)(1) - (2) of this section are met, new coverage for a structure will be effective on either:

(1) the date the application and any binding payment are sent by any traceable method, including those in §5.4001(d)(2)(E)(ii) of this title, if the structure's private market coverage has not ended; or

(2) the date the structure's private market coverage ended, if the application and any binding payment are sent by any traceable method, including those in §5.4001(d)(2)(E)(ii) of this title, not later than the 60th day after the date the structure's private market coverage ends.

(c) If the conditions in subsection (a)(1) - (2) of this section are met, TWIA must offer an installment payment option in which a payment of \$0 qualifies as the binding payment for the first 90 days of coverage. This option must be offered in addition to existing payment options.

(d) For the installment payment option described in subsection (c) of this section, the remaining installment payments must consist of equal monthly payments.

(e) Nothing in this section prohibits TWIA from accepting payments of higher amounts than those due.

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

Filed with the Office of the Secretary of State on August 23, 2022.

TRD-202203202

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Effective date: August 23, 2022

Expiration date: December 21, 2022

For further information, please call: (512) 676-6584



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES SUBCHAPTER K. EMPLOYEE TRAINING AND EDUCATION [RULES]

4 TAC §§1.700 - 1.704

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter K, §§1.700 - 1.702 and proposes new §§1.703 and 1.704. The Department identified the need for the proposed amendments and new rules during its rule review, conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendment to Subchapter K title makes an editorial change for clarity.

The proposed amendments to §1.700 removes unnecessary language, makes editorial changes, and updates the citation.

The proposed amendments to §1.701 focuses the rule on employee eligibility, clarifies training versus tuition reimbursement eligibility, and removes unnecessary language.

The proposed amendments to §1.702 changes the rule to focus on employee participation and includes applicable portions of language being removed from §1.700.

Proposed new §1.703 addresses employee obligations as required by Texas Government Code, Section 656.048.

Proposed new §1.704 addresses at-will employment status of employees, including applicable portions of language being removed from §1.702, with editorial changes for clarity.

Ms. Emilia Nunes, Coordinator for Human Resources, has determined that for the first five-year period the proposed amendments and new rules are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

Ms. Nunes has also determined that for each year of the first five years the proposed amendments and new rules are in effect, the public benefit will be improved readability and clarity of the rules.

Ms. Nunes has determined there are no anticipated economic costs to persons required to comply with the proposed amendments and new rules.

Ms. Nunes has provided the following government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. During the first five years the proposed amendments and new rules are in effect:

- (1) no government programs will be created or eliminated;
- (2) no employee positions will be created or eliminated;
- (3) there will be no increase or decrease in future legislative appropriations to the Department;
- (4) there will be no increase or decrease in fees paid to the Department;
- (5) no new regulations will be created by the proposal;
- (6) there will be no expansion, limitation, or repeal of existing regulation;
- (7) there will be no increase or decrease in the number of individuals subject to the rules; and
- (8) there will be no positive or adverse effect on the Texas economy.

The Department has determined the proposed rules will not affect a local economy within the meaning of Government Code §2001.022 and will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

Written comments on the proposal may be submitted to Ms. Laura Ingram, Deputy General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Laura.Ingram@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments and new rules are proposed pursuant to Section 656.048 of the Texas Government Code (Code), which requires that the Department adopt rules relating to employee eligibility and obligations for receiving training and education supported by the Department, as well as rules requiring the Department's executive head to authorize tuition reimbursement payments before an employee may be reimbursed under Section 656.047(b) of the Code.

The code affected by the proposal is Texas Government Code, Chapter 656, Subchapters C and D.

§1.700. General Provisions.

~~[(a) Use of state funds.]~~ The department may use state funds to provide training and education for its employees in accordance with the provisions of the Texas Government Code, Chapter 656, Subchapters C and D [§§656.044 - 656.049].

- (1) Training to be duty related. The training or education must ~~[shall]~~ be related to the duties or prospective duties of the employee.

{(2) Attendance may be required. A department employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.}

(2) [(3)] Training program purpose [outline]. The training and educational program of the department may include [the following four elements]:

(A) preparing for technological and legal developments;

(B) increasing work capabilities; and

[(C) increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage; and]

(C) [(D)] increasing the competence of state employees.

[(4) Purposes for which public funds may be used. The department may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student or other participant in training or education program. No reimbursement will be made for refundable fees and textbooks.]

[(5) Interagency coordination. The department may contract with another state, local or federal department, agency, or institution, including a state-supported college or university, to train or educate its employees or may join in presenting a training or educational program.]

[(b) Approval subject to available funds. Approval to participate in a training program is not automatic and may be subject to the availability of funds within the department's budget.]

§1.701. Employee Eligibility [Training: Reimbursement for Costs of Employee Education].

(a) Employee Training Eligibility. Employees are eligible to participate in training opportunities, subject to department policy, managerial discretion, and available funds. Eligibility for training is determined without regard to race, color, disability, religion, sex, gender, national origin, age, sexual orientation, veteran's status, genetic information, or protected activity [General. The department may reimburse, upon successful completion, the cost of tuition and non-refundable fees for GED (high school equivalency) programs and job-related courses (undergraduate and postgraduate) taken from an accredited college, university, or technical school. The reimbursement will be considered only on a course by course basis. There shall be no reimbursement for review courses, exam fees, books, lab supplies, classroom materials, schedule change fees, parking fees, lodging expenses and/or other non-mandatory fees. A degree completion study will not be funded under this program].

(b) Employee Tuition Reimbursement Eligibility. To be eligible for educational assistance tuition reimbursement, an employee must meet certain criteria detailed in department policy, including:

(1) department tenure requirement [submit a formal request to their respective Assistant Commissioner];

(2) active employment requirement [not have the cost of the tuition and non-refundable fees for which reimbursement is sought covered by any other financial assistance; however, if the employee is receiving only partial assistance from other sources, Texas Department of Agriculture (TDA) will consider partial reimbursement];

(3) minimum performance rating requirement [show a direct connection between the planned course work and current or prospective job assignments with TDA];

(4) conduct requirements [meet any special conditions that may be required by the Assistant Commissioner or Deputy Commissioner]; and

[(5) not be on probation (unless the subject educational course work is included in the terms of the probation);]

[(6) have at least all "Met Expectations" on the most recent performance appraisal on file];

[(7) be actively employed at the time of the request for educational assistance; not be on leave without pay status when the class(es) begin; and, be employed with TDA for the entirety of the course(s);]

[(8) have been employed by TDA for at least 12 continuous months at the time the request is submitted; and]

(5) [(9)] obtain [must not have used this reimbursement policy more than once in a fiscal year, except with the] written approval for reimbursement from [of] the Deputy Commissioner.

(c) Additional criteria. The department may include additional eligibility criteria in its training and educational assistance policies for employee participation [Employee Obligation].

[(1) If the department pays for training that an employee receives, and during the training period the employee does not perform the employee's regular duties for three or more months as a result of the training, the employee must:]

[(A) work for the department following the training for at least one month for each month of the training period; or]

[(B) pay the department for all the costs associated with the training that were paid during the training period, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensatory leave.]

[(2) Before an employee receives training that will be paid for by the department and during which the employee will not be performing the employee's regular duties for three months or more, the department shall require the employee to agree in writing, before the training begins, to comply with the requirements prescribed under paragraph (1) of this subsection.]

(d) Waiver of eligibility requirements. Eligibility criteria may be waived when the department requires an employee to attend, as all or part of the employee's duties, a training or education program [Obligation. The Deputy Commissioner may waive the requirements prescribed under subsection (c)(1) of this section and release an employee from the obligation to meet those requirements if the Deputy Commissioner finds that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee].

[(e) Employee Liability. If an employee does not provide the services required in accordance with requirements in subsection (c)(1)(A) of this section, provides those services for less than the required term, or fails to make payments required in accordance with subsection (c)(1)(B) of this section, and the employee is not released from the obligation to provide the services or to make the payments under subsection (d) of this section, the employee is liable to the state department for any costs described by subsection (c)(1)(B) of this section and for the department's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees.]

§1.702 Employee Participation [No Effect on At-Will Employment Status].

(a) Approval subject to available funds. Approval to participate in or receive reimbursement for a training and education program

is not automatic and may be subject to the availability of funds within the department's budget.

(b) Attendance may be required. A department employee may be required to attend, as all or part of the employee's duties, a training or education program related to the employee's duties or prospective duties.

(c) Withdrawal of permission. The department may withdraw an employee's permission to participate in an education and training program if the department determines, in its sole discretion, that continued participation would negatively impact the employee's job duties or performance. [Approval to participate in a training program, including department-sponsored training, seminars or conferences shall not in any way affect an employee's at-will status. The approval of a training program is not a guarantee or indication that approval will be granted for subsequent training programs. Approval to participate in a training program, including department-sponsored training, seminars or conferences shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.]

§1.703 Employee Obligations.

(a) General Employee Obligations. Employees participating in the department's training and education programs are obligated to comply with department policies and procedures.

(b) Employee Reimbursement Obligations. Employees who qualify for and receive educational assistance tuition reimbursement are subject to additional obligations, including a term of continued employment or repayment of tuition reimbursement, as set forth Texas Government Code, Chapter 656, Subchapter D and in department policy.

§1.704 At-Will Employment Status.

Approval to participate in the department's training and education programs, including tuition reimbursement, shall not in any way affect and employee's at-will status. Participation in these programs does not constitute a guarantee or indication of continued or future employment in a current or prospective position.

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 19, 2022.

TRD-202203139

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 936-9360



CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §§17.200 - 17.202

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code §17.200, concerning Definitions; §17.201, concerning Wine Marketing Assistance Program; and §17.202, concerning Package Store Participation.

The Department identified the need for the proposed repeals during its rule review of Chapter 17, Subchapter F, conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The repeal of §17.200 is proposed because the repeal of other sections in this subchapter make definitions unnecessary.

The repeal of §17.201 is proposed because it unnecessarily duplicates text found within Texas Alcoholic Beverage Code, §110.051 and no business reason for the rule currently exists.

The repeal of §17.202 is proposed because Texas Alcoholic Beverage Code, §110.052, which was the basis for the rule at the time of its adoption, was amended by Section 4 of Senate Bill 877, 79th Texas Legislature, Regular Session (2005), and as a result the basis for the rule no longer exists.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeals will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals will be in effect, the Department has determined the following:

1. the proposed repeals do not create or eliminate a government program;
2. implementation of the proposed repeals does not require the creation or elimination of employee positions;
3. implementation of the proposed repeals does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals do not require an increase or decrease in fees paid to the Department;
5. the proposed repeals do not create a new regulation;
6. the proposed repeals will repeal an existing regulation;
7. the proposed repeals do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed repeals do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the proposed repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the elimination of unnecessary rules. Ms. Reichek has also determined that for each year of the first five-year period the proposed repeals are in effect, there will be no cost to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has

determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeals, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Comments on the proposed repeals may be submitted to Karen Reichek, Administrator for Trade and Business Development, P.O. Box 12847, Austin, Texas 78711, or by email to Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeals are proposed 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 and Section 110.002 of the Texas Alcoholic Beverage Code, which authorizes the Department to adopt rules as necessary to implement the Texas Wine Marketing Assistance Program. Chapter 50B, Texas Agriculture Code and Chapter 110, Texas Alcoholic Beverage Code are affected by the proposed repeals.

§17.200. *Definitions.*

§17.201. *Wine Marketing Assistance Program.*

§17.202. *Package Store Participation.*

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 22, 2022.

TRD-202203154

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: October 2, 2022

For further information, please call: (512) 936-9360



SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM

4 TAC §17.400, §17.401

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code §17.400, concerning Definitions and §17.401, concerning Shrimp Marketing Assistance Program. The Department identified the need for the proposed repeals during its rule review of Chapter 17, Subchapter H, conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The repeals of §17.400 and §17.401 are proposed because they unnecessarily duplicate text found within Texas Agriculture Code, Chapter 47 and no business reason for the rules exists.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeals will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed

repeals will be in effect, the Department has determined the following:

1. the proposed repeals do not create or eliminate a government program;
2. implementation of the proposed repeals does not require the creation or elimination of employee positions;
3. implementation of the proposed repeals does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals do not require an increase or decrease in fees paid to the Department;
5. the proposed repeals do not create a new regulation;
6. the proposed repeals will repeal an existing regulation;
7. the proposed repeals do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed repeals do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the proposed repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the elimination of unnecessary rules. Ms. Reichek has also determined that for each year of the first five-year period the proposed repeals are in effect, there will be no cost to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeals, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Comments on the proposed repeals may be submitted to Karen Reichek, Administrator for Trade and Business Development, P.O. Box 12847, Austin, Texas 78711, or by email to Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeals are proposed 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. Chapter 47, Texas Agriculture Code is affected by the proposed amendments.

§17.400. *Definitions.*

§17.401. *Shrimp Marketing Assistance Program.*

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 22, 2022.

TRD-202203156



PART 5. STATE SEED AND PLANT BOARD

CHAPTER 81. CERTIFICATION PROCEDURES

4 TAC §81.2

The Texas Department of Agriculture (Department), on behalf of the State Seed and Plant Board (Board), proposes the repeal of Title 4, Part 5, Chapter 81, concerning Certification Procedures.

The Board identified the need for the proposed repeal during its rule review of this chapter conducted pursuant to Texas Government Code, §2001.039 (Agency Review of Existing Rules), the adoption for which can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

The proposed repeal is necessary because the provisions of its single rule, §81.2, involving instructions for submitting seed certification applications and ordering certification labels are outdated and no longer applicable. Current instructions are located on the Seed Quality Program's webpage of the Department's website.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Randy Rivera, Director for Agricultural Commodity Programs, Texas Department of Agriculture, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFITS: Mr. Rivera has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit will be improved clarity of procedures related to certification processes for seeds and plants by the Board.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Mr. Rivera has determined that for each year of the first five years the proposed repeal is in effect, there will be no costs to persons who are required to comply with the proposed repeals.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeal will not affect a local economy, so a local employment impact statement under Government Code §2001.022 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeal. For each year of the first five years the proposed repeal will be in effect, the Department has determined the following:

1. the proposed repeal will not create or eliminate a government program;
2. implementation of the proposed repeal will not require the creation or elimination of existing employee positions;

3. implementation of the proposed repeal will not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeal will not require an increase or decrease in fees paid to the Board or Department;
5. the proposed repeal does not create a new regulation;
6. the proposed repeal will repeal an existing regulation;
7. the proposed repeal will not increase or decrease the number of individuals subject to the rules; and
8. the proposed repeal will not affect this state's economy.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposed repeal may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Morris.Karam@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal of Chapter 81 is proposed under 62.004 of the Texas Agriculture Code which allows the State Seed and Plant Board to establish procedures for certification of genetic purity and identity for kinds and varieties of seeds and plants.

The code affected by the proposal is Texas Agriculture Code, Chapter 62.

§81.2. *Application Procedure, Labels, and Seals.*

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 18, 2022.

TRD-202203118

Skyler Shafer

Assistant General Counsel

State Seed and Plant Board

Earliest possible date of adoption: October 2, 2022

For further information, please call: (512) 936-9360



CHAPTER 82. ADMINISTRATIVE PROCEDURES

SUBCHAPTER A. PROCEDURES FOR MEETING BY TELEPHONE CONFERENCE CALL

4 TAC §§82.1 - 82.5

The Texas Department of Agriculture (Department), on behalf of the State Seed and Plant Board (Board), proposes the repeal of Title 4, Part 5, Chapter 82, concerning Administrative Procedures.

The Board identified the need for the proposed repeal during its rule review of this chapter conducted pursuant to Texas Govern-

ment Code, §2001.039 (Agency Review of Existing Rules), the adoption for which can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

The repeal of Chapter 82 is proposed because it unnecessarily duplicates provisions contained in Texas Agriculture Code, §62.0021 (Meetings by Telephone Conference Call).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Randy Rivera, Director for Agricultural Commodity Programs, Texas Department of Agriculture, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFITS: Mr. Rivera has also determined that for each year of the first five years the proposed repeals are in effect, the public benefit will be the elimination of rules of unnecessary rules.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Mr. Rivera has determined that for each year of the first five years the proposed repeal is in effect, there will be no costs to persons who are required to comply with the proposed repeals.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeal will not affect a local economy, so a local employment impact statement under Government Code §2001.022 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeal. For each year of the first five years the proposed repeal will be in effect, the Department has determined the following:

1. the proposed repeal will not create or eliminate a government program;
2. implementation of the proposed repeal will not require the creation or elimination of existing employee positions;
3. implementation of the proposed repeal will not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeal will not require an increase or decrease in fees paid to the Board or Department;
5. the proposed repeal does not create a new regulation;
6. the proposed repeal will repeal an existing regulation;
7. the proposed repeal will not increase or decrease the number of individuals subject to the rules; and
8. the proposed repeal will not affect this state's economy.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposed repeal may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by

email to Morris.Karam@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal of Chapter 82 is proposed under Section 62.0021 of the Texas Agriculture Code, which allows the State Seed and Plant Board to conduct meetings by telephone conference call and Section 2001.004 of the Texas Government Code, which requires state agencies to adopt rules of practice and procedures.

The code affected by the proposal is Texas Agriculture Code, Chapter 62.

§82.1. *Authorization.*

§82.2. *Limitations.*

§82.3. *Compliance with Open Meetings Act.*

§82.4. *Accessibility to Public.*

§82.5. *Recording of Meeting.*

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 18, 2022.

TRD-202203119

Skyler Shafer

Assistant General Counsel

State Seed and Plant Board

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For further information, please call: (512) 936-9360



TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules sections in 7 TAC Chapter 75, as follows: §§75.1 - 75.3, 75.6, 75.8, 75.10, 75.25 - 75.27, 75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41, 75.81 - 75.83, 75.87 - 75.91, 75.122 - 75.124, 75.126, 75.127, and 75.201 - 75.204. The commission further proposes new rules in 7 TAC Chapter 75, as follows: §§75.1, 75.2, 75.101 - 75.104, 75.121 - 75.123, 75.131 - 75.133, 75.141 - 75.145, 75.151 - 75.153, 75.161 - 75.165, 75.171, 75.181, 75.182, 75.191, 75.201 - 75.204, 75.221 - 75.227, 75.231 - 75.234, 75.241 - 75.245, 75.251, 75.252, 75.261, 75.301 - 75.309, 75.321, 75.323 - 75.326, 75.331, and 75.332. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules in 7 TAC Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, implement Finance Code Title 3, Subtitle C, Savings Banks, and affect savings banks regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75

When viewing the department's rules as a whole, it is somewhat difficult to discern which of the chapters affects savings banks

regulated by the department, particularly when such rules are located alongside the eleven other chapters that affect savings associations and have similar titles. In consideration of the foregoing, the department has determined that it should reorganize Chapters 75 - 77 by consolidating the subject matter of such chapters into one chapter - Chapter 75 - and renaming such chapter "Savings Banks." The proposed rules, if adopted, would: (i) repeal all existing rules in Chapter 75; and (ii) adopt new rules largely patterned after the existing rules in 7 TAC Chapters 75 - 77.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 77, Subchapter A, §§77.2 - 77.9 establish various requirements for loans made by a savings bank. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included as new rules in this proposal.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings banks to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to

the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Loan Requirements have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §§77.2 - 77.9 in connection with the department's proposal to consolidate the subject matter of the existing rules in 7 TAC Chapter 77 into Chapter 75; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, 75.6, 75.8, 75.10

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable

to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.1. *Application for Savings Bank Charter.*

§75.2. *Publication of Notice of Charter Application.*

§75.3. *Hearing on Charter Application.*

§75.6. *Time of Decision on Charter Application.*

§75.8. *Identification of Office Site; Temporary Location and Community.*

§75.10. *Change of Name Application.*

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

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Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



SUBCHAPTER B. EXPEDITED APPLICATIONS

7 TAC §§75.25 - 75.27

Statutory Authority

This proposal is made under the authority of: Finance Code §11.302, authorizing the commission to adopt rules applicable to savings banks; and Finance Code §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.25. *Eligible Institution.*

§75.26. *Expedited Applications.*

§75.27. *Denial of Expedited Treatment.*

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

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.31. *Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.*

§75.32. *Types of Additional Offices.*

§75.33. *Branch Office Applications.*

§75.35. *Mobile Facilities.*

§75.36. *Exemption for Supervisory Sale.*

§75.38. *Change of Home or Additional Office Location.*

§75.39. *Temporary Closing of Additional Offices.*

§75.41. *Offices in Other States or Territories.*

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

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SUBCHAPTER D. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§75.81 - 75.83, 75.87 - 75.91

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.81. *Reorganization, Merger, Consolidation or Purchase and Assumption Transaction.*

§75.82. *Form and Content of Application.*

§75.83. *Notice of Hearing.*

§75.87. *Exemption for Supervisory Merger.*

§75.88. *Acquisitions Involving Financial Institutions in Other States or Territories.*

§75.89. *Reorganization, Merger or Conversion to Another Financial Institution Charter.*

§75.90. *Conversion into a Savings Bank.*

§75.91. *Mutual to Stock Conversion.*

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

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SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.122 - 75.124, 75.126, 75.127

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.122. *Acquisition of a Savings Bank.*

§75.123. *Notice and Hearing.*

§75.124. *Retention of Control.*

§75.126. *Abeyance of Other Applications.*

§75.127. *Exempt Transactions.*

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

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SUBCHAPTER F. GENERAL PROVISIONS

7 TAC §§75.201 - 75.204

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.201. *Definitions.*

§75.202. *Application Filing Requirements.*

§75.203. *Public Notice of Application.*

§75.204. *Motions for Rehearing.*

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

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CHAPTER 75. SAVINGS BANKS

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §75.1, §75.2

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §75.2 is also proposed under the authority of, and to implement, Finance Code: §91.002 and §92.055(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.1. *Purpose and Applicability.*

This chapter governs the chartering, administration, and operations of a Texas-chartered savings bank, including the affiliates and third-party service providers of a savings bank under Finance Code Title 3, Subtitle C, the Texas Savings Bank Act (Finance Code §91.001 et seq.).

§75.2. *Definitions.*

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle C, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings bank;

(B) a spouse of a director, officer, or controlling person of a savings bank;

(C) a member of the immediate family of a director, officer, or controlling person of a savings bank, who is a director or officer of any subsidiary of a savings bank or of any holding company affiliate of a savings bank;

(D) any company (other than the savings bank, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings bank;

(i) is a director or officer;
(ii) in the case of a limited liability company, is a manager or managing member;
(iii) in the case of a partnership, is a general partner;
(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings bank, and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate family, who are also affiliated persons of the savings bank, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings bank and their spouses and their immediate family members, who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings bank, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings Bank Act for which a filing fee is required under §75.102 of this section (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(5) Board--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company (including a limited savings bank), means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings Bank Act (Tex. Fin. Code §91.002).

(8) Capital stock savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(16) Deposit liability--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(19) Financial institution--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company affiliate--A company of which a savings bank is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings bank.

(22) Home office--The office where a savings bank has its headquarters and from which all of its operations are directed.

(23) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(24) Issuer--The savings bank that issued the security in question.

(25) Limited savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings bank. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings bank will operate in compliance with applicable law and that success of the savings bank is probable.

(27) Member--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(28) Mutual savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings bank's certificate of formation or bylaws authorize the chairman to participate in the operating management of the

entity or organization, or if the chairman actually participates in such management.

(30) Person--An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse-- A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings bank--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(33) Shareholder--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(34) Subsidiary-- Any company that is controlled by the savings bank or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings bank.

(35) Surplus--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002).

(36) Texas Savings Bank Act--Finance Code Title3, Subtitle C (Finance Code §91.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

(38) Voting security--includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--Has the meaning assigned by the Texas Savings Bank Act (Finance Code §91.002) in defining "withdrawal value of deposit account."

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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Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

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SUBCHAPTER B. APPLICATIONS DIVISION 1. GENERAL PROVISIONS

7 TAC §§75.101 - 75.104

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.101 - 75.103 are also proposed under the authority of, and to implement, Finance Code §96.002(a)(2). 7 TAC §75.102 is also proposed

under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §91.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents. 7 TAC §75.102 is also proposed under the authority of, and to implement, Finance Code: §91.007; §92.051(a)(2); §92.063; §93.004(b); and §97.001. 7 TAC §75.103 is also proposed under the authority of, and to implement, Finance Code: §92.057(a)(1); §92.352(a)(1); and §92.557(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees have been received. Within 30 days of receipt of an application the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application was incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. Even after being notified of the application being complete, the applicant has a continuing obligation and duty to supplement the application with any information or other supporting documentation the Commissioner determines to be necessary to render a decision on the application, upon written request. The applicant must provide to the Department any information or supporting documentation submitted to the appropriate federal banking agency in connection with the relief sought by the application not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application). Amendments made after publication of such notice may require the notice to be republished, as determined in the sole discretion of the Commissioner, with written notice to the applicant.

§75.102. Application Fees and Charges.

(a) Filing Fees. An applicant must pay the following filing fees, unless an expedited filing fee applies (see subsection (b) of this section):

(1) Charter Application and Amendments.

(A) Charter application: \$10,000.

(B) Change of name: \$500.

(C) Certificate of formation or bylaws amendments: \$100 per request.

(2) Office Locations.

(A) Branch office (other than a mobile facility): \$1,500.

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §75.132 of this title (relating to Mobile Facility).

(C) Relocate home or branch office: \$500.

(3) Reorganization, merger, consolidation, conversion, or purchase and assumption:

(A) For a reorganization, merger, or consolidation transaction in which the resulting institution will be a savings bank, a fee of \$2,500 for each financial institution involved in the transaction.

(B) For a purchase and assumption transaction by a savings bank as purchaser, a fee of \$2,000 for each financial institution involved in the transaction.

(C) For the conversion by a financial institution that is not a savings bank into a savings bank, the fee will be determined based on the total asset size of the institution, as follows:

(i) \$0 - 125 million: \$2,500.

(ii) \$125 million - \$500 million: \$5,000.

(iii) \$500 million - 1 billion: \$10,000.

(iv) over 1 billion - \$15,000.

(D) For the conversion of a savings bank into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings bank reorganizing into, or merging or consolidating with a financial institution that is not a savings bank, no fee will be assessed.

(E) for the conversion of a mutual savings bank into a stock savings bank, a fee of \$7,500.

(4) Change of control (obtaining control of a savings bank): \$5,000.

(5) Permission to issue capital notes or debentures: \$1,000.

(6) Holding Companies.

(A) Registration: \$2,000.

(B) Reorganization as a mutual holding company: \$7,500.

(7) Investment in subsidiaries.

(A) Initial investment: \$1,500, plus \$100 for each office other than the home office of the proposed subsidiary.

(B) Service subsidiary application to engage in a new activity: \$500.

(C) Redesignation of operating subsidiary: \$300.

(D) Change of name: \$100.

(E) Relocate home or branch office: \$100.

(b) Filing Fees for Expedited Applications. Notwithstanding subsection (a) of this section, an applicant qualifying for expedited treatment for purposes of §75.152 of this chapter (relating to Expedited Applications) must pay the following filing fees:

(1) Branch office: \$500.

(2) Mobile facility: \$500 (no additional per-site fee).

(3) Relocate home or additional office location: \$250.

(4) Reorganization, merger, or consolidation: \$2,500.

(5) Purchase and assumption transactions: \$2,000.

(c) Reimbursement for Costs. In addition to filing fees established in subsections (a) and (b) of this section, the applicant must reimburse the Department for any costs incurred in connection with investigating or conducting a hearing on the application, including travel expenses.

(d) Protest Filing Fee. A person filing a protest to an application or otherwise requesting a hearing on an application (other than the applicant) must pay a fee of \$2,500 at the time the protest or request for hearing is filed.

(e) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be paid at the time the application is filed and are nonrefundable. Except for fees set or required by statute, the Commissioner, in his or her sole discretion, may waive, in whole or in part, any fees or costs required by this section.

§75.103. Public Notice of Application.

An application for which notice to the public is required to be published must comply with the requirements of this section, unless otherwise provided by §75.152 of this title (relating to Expedited Applications). The notice must be made using language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§75.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §91.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, not later than the 30th day after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing not later than the 45th day after the date the decision or order that is the subject of the motion for rehearing is signed or the motion for rehearing is deemed overruled by operation of law.

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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Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

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DIVISION 2. CHARTER APPLICATIONS AND AMENDMENTS

7 TAC §§75.121 - 75.123

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §75.121 is also proposed to implement Finance Code: Chapter 92, Subchapter B; §92.203; §92.601(b); and §96.002(a)(2) and (14). 7 TAC §75.122 is also proposed under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(2) and (14).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.121. Savings Bank Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings bank which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §92.051. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings bank, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems to be necessary or prudent to enable the Commissioner to determine the matters set forth in Finance Code §92.058.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §92.058 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings bank must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event no longer than 18 months from the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings bank will be approved unless the application and evidence produced at a hearing, if one is required, satisfy the Commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings bank with an approved charter may open or do business as a savings bank until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §92.057 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings bank will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §92.057.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §92.057. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (c) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.057 is deemed to be waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to have ended for purposes of Finance Code §92.058. If a hearing on the charter application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §92.057.

§75.122. Change of Name.

(a) Approval Required. A savings bank may not change its name without the prior written approval of the Commissioner, and a savings bank may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §92.063. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §92.063 only if the requested name change, if granted, would result in the savings bank's name being substantially or deceptively similar to the party al-

leged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §92.063.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

§75.123. Certificate of Formation or Bylaws Amendments.

(a) Approval Required. A savings bank may not amend its certificate of formation, bylaws, or other governing documents without the prior written approval of the Commissioner.

(b) Application Requirements. The application to amend the savings bank's certificate of formation, or bylaws must include the proposed amendments together with an explanation as to why the amendments are necessary.

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) 475-1535



DIVISION 3. OFFICE LOCATIONS

7 TAC §§75.131 - 75.133

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(2) and (14).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.131. Branch Office.

(a) Approval Required. A savings bank may not establish a branch office or an additional office as provided by §75.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a state savings bank would like to establish and operate a courier/messenger service pursuant to §75.202 of this title (relating to Types of Additional Offices).

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) proposed location for the office;

(2) the personnel and office facilities to be provided;

(3) the estimated cost and projected profits of such office;

and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records that:

(1) the operation and condition of the savings bank affords no basis for supervisory objection;

(2) the character, responsibility and general fitness of the current management of the savings bank warrant a belief that the branch office will be operated in accordance with the Texas Savings Bank Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings bank.

(d) Commencement of Operations. The branch office must commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the Commissioner. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in Finance Code §92.060 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings bank has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed establishment of a branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §92.063. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise

any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings bank may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section, and must include a certified copy of an order from the appropriate banking agency approving the office or unit, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§75.132. Mobile Facility.

(a) Approval Required. A savings bank may not establish a mobile facility as provided by §75.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information which must be subscribed to and sworn before a notary:

- (1) the proposed location(s) at and times during which the mobile facility will operate;
- (2) the need for the mobile facility within the community;
- (3) the personnel and office facilities to be provided; and
- (4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements for approval of a branch office (§75.131 of this title, relating to Branch Office) have been met. Additionally, the savings bank must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility is to be operating and in the county where the savings bank has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §92.063. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§75.133. Relocate Home or Additional Office.

(a) Approval Required. A savings bank may not move its home office or any additional office as provided by §75.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

(b) Immediate Vicinity. The term "Immediate vicinity" as used in Finance Code §92.063 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving bank's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings bank may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner with prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings bank.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information which must be subscribed to and sworn before a notary:

- (1) the existing and new branch location's address;
- (2) a description of the land and building to be built or leased and terms thereof;
- (3) estimates of the cost of removal to and maintenance of the new location;

(4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

(5) evidence of the board's approval of the relocation; and

(6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements for approval of a branch office (§75.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is to be located, and the county where the savings bank has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §92.063. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.063 is deemed to be waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 calendar days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) 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.

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DIVISION 4. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§75.141 - 75.145

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §75.141 is also proposed under the authority of, and to implement, Finance Code: Chapter 92, Subchapters C, H and I; and §96.002(a)(2) and (13). 7 TAC §75.142 is also proposed under the authority of, and to implement, Finance Code §92.352. 7 TAC §75.143 is also proposed under the authority of, and to implement, Finance Code: Chapter 92, Subchapter F; and §96.002(a)(2) and (13). 7 TAC §75.144 is proposed under the authority of, and to implement, Finance Code: Chapter 92, Subchapter G; and §96.002(a)(2) and (13). 7 TAC §75.145 is also proposed under the authority of, and to implement, Finance Code: §92.052; and §96.002(a)(2) and (13).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.141. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings bank; and

(2) A purchase and assumption transaction by a savings bank as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings bank into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings bank reorganizing into, or merging or consolidating with, a financial institution that is not a savings bank, which is governed by section §75.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Bank to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings bank into a savings bank, which is governed by section §75.144 (relating to Conversion into a Savings Bank).

(c) Plan Required. Any savings bank seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings bank must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the total vote the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings bank which has converted in accordance with the Texas Savings Bank Act; and a statement identifying the home of-

file of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §92.352.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (e) of this section, otherwise any right or opportunity by such person to protest or have a hearing on the application under Finance Code §92.352 is deemed to be waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §75.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §92.352(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision within 30 days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision within 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines from the information furnished with the application, the evidence produced at the hearing, if one is required, and the Department's records, that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§75.142. Exemption for Supervisory Merger.

(a) The Commissioner may designate a transaction under §75.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank) as a supervisory merger when:

(1) the Commissioner has placed one or more of the savings banks involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings Bank Act;

(2) the Commissioner has determined that one or more of the savings banks involved is in an unsafe condition; or

(3) the FDIC has determined, and certified to the Commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means that the savings bank is (or savings banks are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner, or any agreement between the savings bank and the Commissioner; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings bank by the Commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings bank which the Commissioner and the board agree place the savings bank in an unsafe condition.

(c) Effect of Exemption. If the Commissioner designates the transaction as a supervisory merger, the application and all information relating to the application are deemed confidential. As a result, the requirements of §75.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank), concerning public notice of the application, and a hearing on the application, are not applicable.

§75.143. Reorganization, Merger or Conversion by a Savings Bank to Another Financial Institution Charter.

(a) A savings bank is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will be held by the resulting institution.

(b) The Commissioner must be given written notice of the intention of the savings bank to reorganize, merge, or convert no less than 30 days prior to the proposed transaction.

(c) The savings bank must file with the Commissioner:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board, shareholders, or members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings bank that the filing made in accordance with this section is complete and has been accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate

banking agency, a copy of which must be filed with the Commissioner, the savings bank receiving the new charter ceases to exist as a savings bank and will no longer be subject to the jurisdiction of the Commissioner. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments as provided by §75.251 of this title (relating to Annual Assessments.)

§75.144. Conversion into a Savings Bank.

(a) The Commissioner may authorize any financial institution to convert itself into a savings bank in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings bank will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings bank, the members or stockholders must also vote on the directors of the savings bank. The proposed directors must execute an application for savings bank charter as provided by Finance Code Chapter 92, Subchapter B, and §75.121 of this title (relating to Savings Bank Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion without a hearing if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 92, Subchapter B, and §75.121 of this title. On approval of the conversion, the saving bank's charter is deemed to include a paragraph stating that the savings bank is incorporated by conversion from another financial institution, as required by Finance Code §92.303(c).

(d) Denial; Request for Hearing. An applicant is entitled to a hearing under Chapter 2001 of the Texas Government Code if the Commissioner denies an application to convert and a written request for a hearing is delivered to the Commissioner within 10 days after the date of denial. A hearings officer designated by the Commissioner will hold the hearing. The Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be completed for purposes of Finance Code §92.304.

§75.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

- (1) a plan of conversion;
 - (2) amendments to the savings bank's certificate of formation and bylaws;
 - (3) a copy of the proxy and soliciting materials to be used;
- and
- (4) such other information the Commissioner may require.
- (b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings bank be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter or directly by the converting savings bank in a direct community offering;

(3) that a direct community offering by the converting savings bank will give a preference to natural persons residing in the counties in which the savings bank has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings bank members approve the plan of conversion;

(6) that each savings accountholder of the converting savings bank will receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings bank;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings bank may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings bank;

(10) that the proxies held with respect to voting rights in the saving bank will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings bank as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings bank has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings bank pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

(h) The converting savings bank must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule.

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

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DIVISION 5. EXPEDITED APPLICATIONS

7 TAC §§75.151 - 75.153

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.151 - 75.153 are also proposed under the authority of, and to implement, Finance Code §96.002(a)(2).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.151. Eligible Institution.

An eligible institution is a financial institution that:

(1) is well capitalized as defined by 12 C.F.R. §324.403;

(2) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System (CAMELS) at the most recent examination by the Department or federal regulatory agencies, and management is rated either 1 or 2;

(3) received a CRA and compliance rating of satisfactory or above at the savings bank's most recent inspection by the appropriate federal banking agency;

(4) is not operating in violation of a regulatory condition or directive imposed by the state or federal banking regulatory agency; and

(5) is not operating under a supervisory action of, or a plan for remedial or corrective action imposed by, a state or federal banking agency.

§75.152. Expedited Applications.

(a) An eligible institution as defined in §75.151 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.131 of this title (relating to Branch Office), §75.132 of this title (relating to Mobile Facility), §75.133 of this title (relating to Relocate Home or Branch Office Location), or §75.111 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Bank), and simultaneously tender the required filing fee pursuant to §75.102 of this title (relating to Application Fees and Charges).

(b) An expedited filing must include the following items, unless waived in writing by the Commissioner:

(1) a detailed description of the transaction;

(2) a pro forma balance sheet and income statement for all parties to the transaction, including adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that the resulting state savings bank is well capitalized as defined by 12 C.F.R. §324.403, including pro forma financials for the first four quarters after the effective date of the transaction;

(3) a certified resolution of the board and, if required, shareholders approving the proposed transaction;

(4) copies of all other required regulatory notices or filings submitted concerning the transaction; and

(5) evidence satisfactory to the Commissioner that a public notice of the application has been published and effected as provided by §75.103 of this title (relating to Public Notice of Application), published in each county where a non-expedited application is required to be published (however, the requirement for the publication to be preapproved by the Commissioner shall not apply to an application made in accordance with this section, and the notice may be published contemporaneously with the application being submitted; provided, the notice is otherwise deemed to be acceptable to the Commissioner).

(c) The Commissioner will render a decision on the expedited application within 30 days after the date the expedited filing is complete and has been accepted for filing as provided by §75.101 of this title (Relating to Application Filing Requirements), provided, the application is not protested or a hearing is not otherwise requested. The Commissioner may, at any time before the time period to render a decision on the application has expired, elect to refer the expedited application to a hearing. If a hearing is required, consideration of the application will proceed in the same fashion as a non-expedited application.

(d) The applicant bears the burden to supply all material information necessary to enable the Commissioner to make a fully informed decision regarding the expedited filing, including but not limited to, the applicant's eligibility to make the application on an expedited basis in accordance with §75.151 of this title (relating to Eligible Institution).

§75.153. Denial of Expedited Treatment.

(a) The Commissioner may deny expedited filing treatment to an otherwise eligible applicant if the Commissioner determines in his or her sole discretion that the proposed transaction involves significant policy, supervisory, or legal issues; is contingent upon other statutory or regulatory approval; results in an entity that is not a financial institution; or involves an entity that is not domiciled in Texas.

(b) The Commissioner will provide written notification to the applicant within 15 days after the date the expedited filing is complete and has been accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements) if expedited filing treatment is denied, indicating the reason for denial.

(c) A decision by the Commissioner to deny expedited treatment is final and may not be appealed.

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

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DIVISION 6. CHANGE OF CONTROL

7 TAC §§75.161 - 75.165

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 92, Subchapter L; and §96.002(a)(2) and (10).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.161. *Acquisition of a Savings Bank.*

The following procedures must be followed when a person desires to obtain control of a savings bank (including change of control of a savings bank holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings bank if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings bank, unless such person has filed with the Commissioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all persons who are di-

rectors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings banks, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings bank's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated per-

sons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings bank in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information referred to in this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information referred to in this section is a corporation, the Commissioner may require that the information called for must be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings bank may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §92.556 and §92.557. The Commissioner will render a decision within 60 days after the application is complete and has been accepted for filing as provided by §75.101 of this title (relating to Application Filing Requirements). The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank being acquired;

(C) plans or proposals to liquidate or sell the savings bank or its assets are not in the best interest of the savings bank;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings bank;

(E) the savings bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility

held by the savings bank or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or

(G) the applicant is not acting in good faith.

§75.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §75.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings bank has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §92.557.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision, unless the Commissioner establishes a longer time period, with written notice to the applicant.

§75.163. Retention of Control.

(a) The following conditions affecting any controlled savings bank, regardless of when or how such control has been acquired, are grounds for the Commissioner to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the Commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings bank, or other demonstration of untrustworthiness by the savings bank, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings bank; or

(2) the violation of any antitrust law of this state by the savings bank, the holding company, or any affiliate.

(b) The Commissioner may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The Commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank. If the Commissioner finds that such unauthorized control exists, the Commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the Commissioner may issue any other supervisory order the Commissioner deems appropriate.

§75.164. Abeyance of Other Applications.

When an application for approval of acquisition of control of a savings bank has been received by the Commissioner and the savings bank also

has other applications on file with the Commissioner, such applications may, at the Commissioner's discretion, be held in abeyance until the change of control application has been disposed of.

§75.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings bank which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner within 30 days and provided further that the acquiror may not retain such control for more than one year from the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same; and

(3) acquisition of additional stock of a savings bank by any person who has held power to vote 25% or more of any class of voting stock in such savings bank continuously for the three-year period preceding such acquisition, or has maintained control of the savings bank continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §75.171

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code: §96.002(a)(11); and §93.004(b).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.171. Capital Notes and Debentures.

(a) Approval Required. No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner and subject to any conditions the Commissioner may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

(b) Requirements. A savings bank may, by resolution of its board and with prior approval of the Commissioner, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the Commissioner that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner as to the need and utilization of such funds by the savings bank in a profitable manner.

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DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §75.181, §75.182

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code: §96.002(a)(11) and (15); and §97.002. 7 TAC §75.182 is also proposed under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.181. Registration.

A holding company must apply and register with the Commissioner within the time prescribed by Finance Code §97.002. The applica-

tion must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

§75.182. Reorganization as a Mutual Holding Company.

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Finance Code §§97.051 - 97.053. The savings bank must provide to the Commissioner an application to reorganize in a form specified by the Commissioner. The applicant must provide one signed original and at least one copy of the application together with complete exhibits. The application must include:

(1) the proposed certificate of formation for the proposed subsidiary savings bank which must comply with the requirements of Finance Code §92.051 and §92.052 or §92.053, as applicable;

(2) the proposed bylaws for the proposed subsidiary;

(3) the proposed restated certificate of formation and bylaws of the mutual holding company;

(4) the complete plan of reorganization; and

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B;

(b) On receipt of the application, the Commissioner may conduct an examination of the applicant savings bank.

(c) The Commissioner may approve the reorganization without a hearing if the Commissioner determines:

(1) that the resulting savings bank will be in sound condition and meets all requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the Commissioner and the Finance Commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the Commissioner denies an application to reorganize, the applicant may appeal in the same manner as provided in Finance Code §92.304.

(e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.

(1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner.

(2) For the purposes of Finance Code §97.053(a)(3) and (4), the subsidiary holding company will be treated as a savings bank issuing stock and must comply with the requirements of those sections. The mutual holding company parent must at all times own more than 50% of the outstanding stock of the subsidiary holding company.

(3) The certificate of formation and bylaws of a subsidiary holding company must be approved by the Commissioner and may only be amended with the prior approval of the Commissioner by making an application in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §75.191

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code §96.002(a)(16)(Q).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.191. Subsidiary Application.

(a) In order to obtain approval for a subsidiary, the savings bank must file with the Commissioner an application accompanied by the following information:

(1) an audited financial statement in the event of acquisition of an existing company;

(2) a certified board resolution of the board of the applying savings bank approving the investment in the proposed subsidiary;

(3) a certified copy of the certificate of formation and bylaws of the proposed subsidiary;

(4) the acquisition terms, cost, or investment requirements of the savings bank;

(5) projected operating statements of the proposed subsidiary for the first 3 years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent liability of the savings bank and the proposed subsidiary;

(7) an outline of plans for operation of the proposed subsidiary;

(8) evidence that the proposed subsidiary will have adequate management and operating personnel with proper supervision by savings bank management;

(9) plans for the safeguarding of assets of the proposed subsidiary;

(10) affidavits from all directors of a savings bank and the proposed subsidiary fully disclosing any interest they may directly or indirectly have in the proposed subsidiary; and

(11) such other information or data as the Commissioner may require.

(b) The Commissioner may approve an investment in a subsidiary if the Commissioner finds that:

(1) the operation and condition of the savings bank affords no basis for supervisory objection;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the subsidiary will be clearly distinguishable from those of the parent savings bank; and

(4) the subsidiary is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings bank.

(c) If the Commissioner finds that a savings bank has abused or is abusing the authority to invest in a subsidiary, the Commissioner may exercise discretion in denying such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

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SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§75.201 - 75.204

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code: §92.063; and §96.002(a)(14).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings bank may establish, maintain, or relocate its home office, or an additional office as provided by §75.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §75.133 of this title (relating to Relocate Home or Additional Office).

(b) Ancillary Facilities. An authorized or approved office of a savings bank is the place where the business of the savings bank is conducted, and with the prior written consent of the Commissioner, may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved office of a

savings bank also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings bank for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings bank which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings bank.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §75.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §93.011, a savings bank must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency upon filing such notice. A savings bank must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings bank may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings bank, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §92.063:

(1) Automated or remote activities. A savings bank may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings bank may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings bank may establish or maintain administrative offices to perform the internal operations of the bank, provided the savings bank does not conduct banking activities.

(4) Advertising and marketing. A savings bank may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings bank, and assisting persons in completing application forms to open a deposit account, provided the savings bank does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings bank may participate in trade association events promoting the banking or financial services industry broadly. A savings bank may also host, attend, or otherwise participate in community events, provided the savings bank does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings bank may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third party IT service provider, or such other physical presence tied to the IT infrastructure of the savings bank.

(7) Ancillary customer service activities. A savings bank may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§75.202. Types of Additional Offices.

The following types of additional offices may be established and maintained by a savings bank:

(1) branch offices at which the savings bank may transact any business that could be done in the home office;

(2) mobile facilities at which the savings bank may transact any business of the institution which could be done in the home office (a detailed record of the transactions at such facility must be maintained); and

(3) courier/messenger service to transport items relevant to the bank's transactions with its customers, including courier services between financial institutions.

§75.203. Temporary Closing of Additional Offices.

In the event a savings bank closes any additional office of any type on a temporary basis, such office must be reopened within 12 months or less, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §75.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be furnished to the Commissioner within 10 days of such closing, and no additional office may reopen until the Commissioner receives written notification within 10 days of such reopening.

§75.204. Operation of a Mobile Facility.

Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately identified at the site and on the facility, and located within 100 miles of the savings bank's home office or a branch office.

(2) The savings bank must maintain adequate safeguards for the security of the mobile facility. The Commissioner may require additional safeguards, if in the Commissioner's sole discretion, existing safeguards are inadequate, with written notice to the savings bank.

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**DIVISION 2. BOOKS, RECORDS,
ACCOUNTING PRACTICES, FINANCIAL
STATEMENTS, AND RESOURCES**

7 TAC §§75.221 - 75.227

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §75.221 is also proposed under the authority of, and to implement, Finance Code: §92.201; §96.002(a)(3) and (5); and §96.056. 7 TAC §75.222 is also proposed under the authority of, and to implement, Finance Code: §92.201; and §96.002(a)(3) and (4). 7 TAC §75.223 is also proposed under the authority of, and to implement, Finance Code: §96.002(a)(7) and (11); §96.051; and §96.053. 7 TAC §75.224 is also proposed under the authority of, and to implement, Finance Code §96.002(a)(11). 7 TAC §75.225 is also proposed under the authority of, and to implement, Finance Code §96.002(a)(9). 7 TAC §75.226 is also proposed under the authority of, and to implement, Finance Code §96.002(a)(11). 7 TAC §75.227 is also proposed under the authority of, and to implement, Finance Code: §92.051(b)(2); §92.058(c)(2); §92.062; §92.157; §92.205; and §96.002(a)(11).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.221. Books and Records.

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Council. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

§75.222. Accounting Practices.

Every savings bank must use such forms and observe such accounting principles and practices as the Commissioner may require from time to time.

§75.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or the rules (regulations) adopted thereunder.

§75.224. Misdescription of Transactions.

No savings bank may, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§75.225. Charging Off or Setting Up Reserves Against Bad Debts.

The Commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with GAAP.

§75.226. Examinations.

(a) The Commissioner will examine every state savings bank once in each year, or more frequently if the Commissioner determines that the condition of the savings bank justifies more frequent attention to enforce the Texas Savings Bank Act. The Commissioner may defer an examination for not more than six months if the Commissioner considers the deferment appropriate to the efficient enforcement of the Texas Savings Bank Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§75.227. Bylaws.

(a) The bylaws of a savings bank must contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board. Bylaw amendments may not take effect before being filed with and approved by the Commissioner in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner obtained in accordance with §75.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§75.231 - 75.234

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable

to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §75.231 and §75.232 are proposed under the authority of, and to implement, Finance Code: §92.052(b); §92.053(b); §92.054; §92.102; §92.203; and §96.002(a)(1) and (11). 7 TAC §75.233 is also proposed under the authority of, and to implement, Finance Code: Chapter 96, Subchapter C; and §96.002(a)(1) and (11). 7 TAC §75.234 is also proposed under the authority of, and to implement, Finance Code: §93.004(b); and §96.002(a)(11).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.231. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this division, "Capital" for a savings bank includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under GAAP) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must maintain capital at levels that are required for institutions whose accounts are insured by the FDIC.

§75.232. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner may increase or decrease the minimum capital requirement set forth in this chapter upon written request by a savings bank or by supervisory directive if the Commissioner determines that:

(1) the savings bank's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the certificate of formation or bylaws of the savings bank, or a violation of any law, rule, or supervisory action applicable to the savings bank or any condition that the Commissioner has imposed on the savings bank by written order or agreement;

(2) the savings bank is well managed. In determining whether the savings bank is well managed, the Commissioner may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the Commissioner may deem necessary to properly evaluate the quality of the savings bank's management; and

(3) the savings bank has submitted a plan acceptable to the Commissioner for restoring capital within a reasonable period of time. Such plan must describe the means and schedule by which capital will be increased. The plan must also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons. The plan must provide for improvement in the savings bank's capital on a

continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner to be reasonably feasible will not be acceptable. The Commissioner may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Progress Reports. Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner must file quarterly progress reports regarding compliance with its capital plan. The Commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

- (1) the savings bank fails to comply with its capital plan;
- (2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;
- (3) the savings bank undergoes a change of control or a material change in management that was not approved by the Commissioner;
- (4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;
- (5) information is discovered that was not made available to the Commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;
- (6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner has imposed upon the savings bank by written order or agreement; or
- (7) the savings bank fails to submit the reports required by this section.

§75.233. Business Plans.

(a) All savings banks whose operations are considered by the Commissioner unsafe or unsound or that have total capital less than the amount required under §75.231 of this title (relating to Capital Requirements) or §75.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least 1 year, but may be for so long as the Commissioner may require.

(b) The savings bank's business plan will be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board, at least annually.

§75.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the same terms and conditions as stated in §75.171 of this title (relating to Capital Notes and Debentures), a savings bank may, by resolution of its board and with

prior approval of the Commissioner, join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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DIVISION 4. HOLDING COMPANIES

7 TAC §§75.241 - 75.245

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§75.241 - 75.246 are also proposed under the authority of, and to implement, Finance Code: §96.002(a)(11) and (15); and §97.002. 7 TAC §75.241 is also proposed under the authority of, and to implement, Finance Code §97.002. 7 TAC §75.242 is further proposed under the authority of, and to implement, Finance Code §97.004. 7 TAC §75.243 is further proposed under the authority of, and to implement, Finance Code §97.005. 7 TAC §75.244 is further proposed under the authority of, and to implement, Finance Code §97.006. 7 TAC § 75.245 is further proposed under the authority of, and to implement, Finance Code §97.007. 7 TAC §75.246 is further proposed under the authority of, and to implement, Finance Code §97.003. 7 TAC §75.247 is further proposed under the authority of, and to implement, Finance Code Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.241. Reports.

Each holding company and each subsidiary of a holding company, other than a savings bank, must file with the Commissioner reports required by the Commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner may require. A holding company must file with the Commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available.

§75.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §75.221 of this title (relating to Books and Records), pertaining to savings banks.

§75.243. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner may prescribe. The holding company must pay the cost of an examination. The confidentiality provisions of Finance Code §96.356 apply to an examination performed in accordance with this section, however, the Commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§75.244. Agent for Service of Process.

The Commissioner may require a holding company or a person other than a corporation connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§75.245. Release from Registration.

The Commissioner at any time, on the Commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the Commissioner determines that the company no longer controls a savings bank. If released, the savings bank associated with the holding company must maintain the books and records of such holding company.

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DIVISION 5. ASSESSMENTS AND FEES

7 TAC §75.251, §75.252

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; §91.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §75.252 is also proposed under the authority of, and to implement, Finance Code §96.055(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.251. Annual Assessments.

(a) Annual assessment. All savings banks chartered under the laws of the state and all foreign savings banks (as defined by the Texas Savings Bank Act) holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an

amount determined by the Commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings bank must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of assessment. The assessment will be determined based on either the total assets, or total risk-weighted assets of the savings bank, whichever results in the lowest fee being assessed. The valuation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment. A savings bank's total assets or total risk-weighted assets will be derived from the savings bank's Federal Financial Institutions Examination Council consolidated report of condition and income (call report), filed in accordance with federal law. If a savings bank is not required by applicable federal law to disclose its total risk-weighted assets in the call report, the savings bank may voluntarily report to the Commissioner information concerning its total risk-weighted assets for purposes of calculating its assessment, which must be provided to the Commissioner in the manner and within the time prescribed by the Commissioner; otherwise, the assessment will be based on the savings bank's total assets.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:

Figure: 7 TAC §75.251(d)

§75.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes, but is not limited to, examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by this section.

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DIVISION 6. COMPLAINT PROCEDURES

7 TAC §75.261

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 96, Subchapter C; §96.002(a)(11); and §96.054.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.261. Savings Bank Complaint Notes

(a) Definitions.

(1) Privacy notice means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal hous-

ing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page.

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SUBCHAPTER D. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

DIVISION 1. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§75.301 - 75.309

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code §96.002(a)(16).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans.

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) One borrower--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10% or more (based on the value of their contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% of more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor will not be deemed an obligor.

(7) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(8) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(9) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§75.302. Loans Authorized.

(a) A savings bank may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings Bank Act, and this subchapter, including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

(3) manufactured home loans;

(4) interim construction loans;

(5) other real estate loans, including loans on the security of leasehold interest in real estate;

(6) personal property loans;

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate;

(8) non-real estate commercial loans;

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans; and

(11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings bank may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings bank domiciled in this state, so long as for each such transaction the savings bank complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

§75.303. Non-Real Estate Commercial Loans.

A savings bank may lend and invest not more than 40% of its total assets in non-real estate commercial loans for business, corporate, or agricultural purposes. The amount of each letter of credit or other unfunded commitment to make a non-real estate commercial loan must be included in computing this limitation.

§75.304. Unsecured Loans.

(a) A savings bank may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

§75.305. Loan Policies and Documentation.

(a) Policies. Each savings bank must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings bank's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings bank and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings bank to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings bank may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the

loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed applicable limitations on loans to one borrower for purposes of Finance Code §94.001 are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings bank);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings bank as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings bank arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings bank may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings bank within 5 business days after closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings bank.

(2) The permanent loan file required by this section must be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings bank obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement does not apply to loan participations purchased by the savings bank.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings bank purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings bank must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings bank must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings bank must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§75.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§75.307. Letters of Credit.

A savings bank may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements.

(1) The savings bank must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.

(3) The savings bank's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings bank's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and there is no obligation on the part of the savings bank to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings bank must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) The amount of each letter of credit must be included in the aggregation of loans subject to the limitations of this chapter relating to the loans to one borrower for purposes of Finance Code §94.001.

(7) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(8) An appropriate fee may be collected for each letter of credit issued.

§75.308. Investment in Securities.

(a) A savings bank is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings bank's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings bank investing in securities under this section must insure that the securities are delivered to the savings bank, or for the savings bank's account to a custodial agent or trustee designated by the savings bank, within 3 business days after paying for or becoming

obligated to pay for the securities. The savings bank may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the Federal Deposit Insurance Corporation, any savings and loan association legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings bank must insure that it receives a custodial or trust receipt for the securities within 3 business days of the delivery of the securities.

(c) No savings bank or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings bank or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings bank.

(e) Investments in equity securities.

(1) A savings bank or any service corporation, operating subsidiary, or finance subsidiary of a savings bank may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings bank may invest in stock or equity securities unless the securities are eligible investments for federal savings banks.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

(f) A savings bank may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§75.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings bank may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings bank may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings bank's facilities not improved and occupied as banking facilities within 5 years from the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of within 5 years of the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and

other obligations owing the savings bank may be held by a savings bank for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings bank must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is \$500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings bank acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of \$500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the Federal Deposit Insurance Corporation in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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

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Department of Savings and Mortgage Lending

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DIVISION 2. SUBSIDIARIES

7 TAC §§75.321, 75.323 - 75.326

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement, Finance Code §96.002(a)(16)(Q).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.321. Investment in and Divestiture of Subsidiaries.

(a) A savings bank may, only after prior written approval of the Commissioner, invest in a subsidiary.

(b) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the Commissioner.

(c) A savings bank may, with prior written approval of the Commissioner, divest itself of a subsidiary or merge or consolidate the subsidiary with another company if the Commissioner finds that the terms and conditions of the transaction are in the best interests of the savings bank.

§75.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings bank's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings bank offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the Commissioner.

(b) A subsidiary may not, without prior approval of the Commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings bank other than those specifically authorized in this section.

(d) The savings bank must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the Commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§75.324. *Subsidiary Operations.*

(a) The savings bank must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings bank within 30 days from date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings bank or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings bank or its holding company may satisfy this requirement.

(e) All directors of the savings bank and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §75.221 of this title (relating to Books and Records), pertaining to savings banks.

§75.325. *Subsidiary Investment and Debt Limitation.*

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings bank's total assets without prior approval.

§75.326. *Operating Subsidiaries.*

A savings bank is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings bank. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings bank, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §75.325 of this title (relating to Subsidiary Investment and Debt Limitation). Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

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

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DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §75.331, §75.332

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§75.331. *User Safety at Unmanned Teller Machines.*

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the

safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under Finance Code §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned Teller Machines Located in a Bank Vestibule. The provisions of the Finance Code Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository must certify compliance with the Finance Code Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

§75.332. Pledging of Assets to Secure Deposits of Certain Public Purpose Entities.

A savings bank may pledge its assets to secure the deposits of:

(1) the United States government or any instrumentality thereof;

(2) any State or political subdivision, agency, or instrumentally thereof;

(3) any local municipality, agency, or instrumentally thereof;

(4) any federally-recognized Indian tribe; or

(5) any other entity, as required by state or federal law, or court order.

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CHAPTER 76. MISCELLANEOUS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules sections in 7 TAC Chapter 76, as follows: §§76.1, 76.2 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.91 - 76.103, 76.105 - 76.110, and 76.122. This pro-

posal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, implement Finance Code Title 3, Subtitle C, Savings Banks, and affect savings banks regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75

When viewing the department's rules as a whole, it is somewhat difficult to discern which of the chapters affects savings banks regulated by the department, particularly when such rules are located alongside the eleven other chapters that affect savings associations and have similar titles. In consideration of the foregoing, the department has determined that it should reorganize Chapters 75 - 77 by consolidating the subject matter of such chapters into one chapter - Chapter 75 - and renaming such chapter "Savings Banks." The proposed rules, if adopted, would repeal all existing rules in Chapter 76.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings banks to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 76; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 75 patterned after the existing rules in Chapter 76; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate

Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

- §76.1. *Books and Records.*
- §76.2. *Accounting Practices.*
- §76.4. *Financial Statements; Annual Reports; Audits.*
- §76.5. *Misdescription of Transactions.*
- §76.6. *Charging Off or Setting Up Reserves against Bad Debts.*
- §76.7. *Examinations.*
- §76.12. *Bylaws.*

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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Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

- §76.21. *Capital Requirements.*
- §76.22. *Increase or Decrease of Minimum Capital Requirements.*
- §76.23. *Business Plans.*
- §76.24. *Capital Notes and Debentures.*
- §76.25. *Provisions for Issuance of Secured or Unsecured Capital Obligations.*
- §76.26. *Joint Issuance of Capital Obligations.*

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

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SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

- §76.41. *Registration.*
- §76.42. *Reports.*
- §76.43. *Books and Records.*
- §76.44. *Examinations.*
- §76.45. *Agent for Service of Process.*
- §76.46. *Release from Registration.*
- §76.47. *Mutual Holding Companies.*

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

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SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.91 - 76.103, 76.105, 76.107 - 76.110

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

- §76.91. *Fee for Charter Application.*
- §76.92. *Fee for Branch Office.*
- §76.93. *Fee for Mobile Facility.*
- §76.94. *Fee for Change of Name or of Location.*
- §76.95. *Fee for Special Examination.*
- §76.96. *Fee for Certificate of Formation and Bylaw Amendments.*
- §76.97. *Fee for Permission To Issue Capital Obligations.*
- §76.98. *Annual Assessments.*
- §76.99. *Fee for Reorganization, Merger, and Consolidation.*
- §76.100. *Fees for Expedited Applications.*
- §76.101. *Fee for Change of Control.*
- §76.102. *Fee for Subsidiaries.*

§76.103. *Fee for Charter Application under 7 TAC §75.36.*

§76.105. *Fee for Conversion into a Savings Bank.*

§76.106. *Fee for Mutual to Stock Conversion.*

§76.107. *Fee for Holding Company Registration.*

§76.108. *Fees for Public Information Requests.*

§76.109. *Fee for Protest Filing.*

§76.110. *Fees Nonrefundable.*

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

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SUBCHAPTER H. COMPLAINT PROCEDURES

7 TAC §76.122

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§76.122. *Savings Bank Complaint Notices.*

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

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules sections in 7 TAC Chapter 77, as follows: §§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91 - 77.96, 77.115, and 77.116. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 75, Applications, Chapter 76, Miscellaneous, and Chapter 77, Loans, Investments, Savings, and Deposits, implement Finance Code Title 3, Subtitle C, Savings Banks, and affect savings banks regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 75, 76, and 77 into Chapter 75

When viewing the department's rules as a whole, it is somewhat difficult to discern which of the chapters affects savings banks regulated by the department, particularly when such rules are located alongside the eleven other chapters that affect savings associations and have similar titles. In consideration of the foregoing, the department has determined that it should reorganize Chapters 75 - 77 by consolidating the subject matter of such chapters into one chapter - Chapter 75 - and renaming such chapter "Savings Banks." The proposed rules, if adopted, would repeal all existing rules in Chapter 77.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 77, Subchapter A, §§77.2 - 77.9 establish various requirements for loans made by a savings bank. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 75, published elsewhere in this issue of the *Texas Register*.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the

proposed rules will be for the department's rules governing savings banks to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 77; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 75 patterned after the existing rules in Chapter 77. The foregoing notwithstanding, the proposed rules related to Changes Concerning Loan Requirements do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §77.2 - 77.9 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 77 into 7 TAC Chapter 75; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91 - 77.96

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

- §77.1. *Loans Authorized.*
- §77.2. *Limitations on Aggregate Loans to One Borrower.*
- §77.3. *Residential Real Estate Loans.*
- §77.4. *Home Improvement Loans.*
- §77.5. *Manufactured Home Loans.*
- §77.6. *Interim Construction Loans.*
- §77.7. *Other Real Estate Loans.*
- §77.8. *Personal Property Loans.*
- §77.9. *Commercial Real Estate Loans.*
- §77.10. *Non-Real Estate Commercial Loans.*
- §77.11. *Unsecured Loans.*
- §77.31. *Loan Policies and Documentation.*
- §77.33. *Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.*
- §77.35. *Definitions.*
- §77.51. *Letters of Credit.*
- §77.71. *Investment in Securities.*
- §77.73. *Investment in Banking Premises and Other Real Estate Owned.*
- §77.91. *Investment in and Divestiture of Subsidiary Corporations.*
- §77.92. *Subsidiary Corporation Application.*
- §77.93. *Authorized Subsidiary Investments.*
- §77.94. *Subsidiary Operations.*
- §77.95. *Subsidiary Investment and Debt Limitation.*
- §77.96. *Operating Subsidiaries.*

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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Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

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SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.115, §77.116

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings banks; and §96.002(a), authorizing the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle C, Savings Banks.

§77.115. User Safety at Unmanned Teller Machines.

§77.116. Pledging of Assets to Secure Deposits of Certain Public Entities.

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

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CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. REGISTRATION

7 TAC §79.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to amend 7 TAC Chapter 79, §79.4, concerning Bond Requirement. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Explanation of and Justification for the Rule

The existing rules under 7 TAC Chapter 79, Residential Mortgage Loan Servicers, implement Finance Code Chapter 158, Residential Mortgage Loan Servicers, and affect residential mortgage loan servicers registered with the department to service residential mortgage loans secured by real estate located in Texas.

Changes Concerning Electronic Surety Bonds

Pursuant to Finance Code §158.055, a residential mortgage loan servicer, in order to qualify for the registration, must obtain and

maintain a surety bond against which the department's commissioner (commissioner) may make a claim in the event the residential mortgage loan servicer is unable or unwilling to make payment to comply with a final order of the commissioner. Finance Code §158.055(g) authorizes the commission to adopt rules "establishing the terms and conditions of the surety bond and the qualifications of the surety." Existing §79.4 establishes requirements concerning such surety bond, including: (i) that the seal of the surety appear on the face of the bond; (ii) that the bond include an attached power of attorney; and (iii) the filing of a newly-issued bond in the event the commissioner recovers against the bond. Such requirements are relevant to the issuance of a traditional, paper surety bond. Since adoption of existing §79.4, there has been a growing trend, both in the surety bond industry, and with regulatory agencies that require such bonds, towards the use of electronic surety bonds. The department seeks to adopt the use of such electronic surety bonds by first allowing their optional use during the 2023 registration period (applications accepted beginning November 1, 2022), and then transitioning to electronic surety bonds on a mandatory basis, perhaps as early as the 2024 registration period (applications accepted beginning November 1, 2023). The proposed rule, if adopted, would render §79.4 compatible with electronic surety bonds by clarifying that the requirements concerning a seal and power of attorney apply only to a traditional, paper bond (electronic surety bonds do not include a seal or power of attorney), and eliminating the requirement to seek reissuance of the bond in the event of a successful claim (electronic surety bonds are perpetual unless cancelled and need not be reissued).

Other Modernization and Update Changes.

The proposed rule, if adopted, would make changes to modernize and update the rule including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rule is in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rule. Antonia Antov has further determined that for the first five-year period the proposed rule is in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rule. Antonia Antov has further determined that for the first five-year period the proposed rule is in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rule. Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing or administering the proposed rule will be increased efficiency by the department in reviewing applications for a resi-

dential mortgage loan servicer registration. Specifically, as residential mortgage loan servicer registrants completely transition to use of an electronic surety bond, the department's staff in its Licensing section will no longer need to obtain and review evidence of the surety bond or continuation certificate during the renewal process other than ensuring that the amount of the surety bond is adequate. By easing these burdens, the department may reallocate such resources to its other functions, thereby ensuring the efficient review and decision-making on applications for a residential mortgage loan servicer registration, and other license/registration types regulated by the department, thereby ensuring that the industries regulated by the department in the area of residential mortgage loans are appropriately staffed and meeting demand, thereby potentially reducing costs to Texas consumers.

Probable Economic Costs to Persons Required to Comply with the Proposed Rule

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions; (3) implementation of the proposed rule does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule does not create a new regulation (rule requirement); (6) the proposed rule does expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Electronic Surety Bonds repeal an existing rule requirement by eliminating the requirement that all surety bonds include the seal of the surety and a power of attorney; and by eliminating the requirement that the bond be reissued in the event of a successful claim; (7) the proposed rule does not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rule does not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an

economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Deputy General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code: §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158; and §158.055(g), authorizing the commission to adopt rules establishing the terms and conditions of surety bond required of a person to be registered as a residential mortgage loan servicer under Finance Code Chapter 158.

This proposal affects the statutes contained in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.4. Bond Requirement.

(a) (No change.)

~~[(b) Bonds should be payable to the Commissioner; any recovery made against a bond by the Commissioner shall require a new bond to be filed within 10 days.]~~

(b) ~~[(e)]~~ The name of the principal insured on the bond must match exactly the name filed with [as it will appear on the registration information as approved by] the Texas Secretary of State, if applicable. If the bond is a paper bond, it must include the [The] surety seal and an attached power of attorney [must accompany the bond when submitted to the Department].

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

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Iain A. Berry

Deputy General Counsel

Department of Savings and Mortgage Lending

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL

MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.1, 159.3, 159.52, 159.102, 159.103, 159.105, 159.109, 159.201, 159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.1, Definitions; §159.3, Appraisal Management Company Advisory Committee; §159.52, Fees; §159.102, Eligibility for Registration; Ownership; §159.103, Applications; §159.105, Denial of Registration or Renewal of Registration; §159.109, Inactive Status; §159.201, Guidelines for Revocation, Suspension, or Denial of License; and §159.204, Complaint Processing. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect TALCB procedures and division names, and to simplify and clarify where needed.

More specifically, the proposed amendments to §159.3 extend the date for the AMC advisory committee to continue to exist to coincide with the next deadline to complete the quadrennial rule review.

The proposed amendments to §159.52 clarify the applicability of the online convenience fee required by the Department of Information Resources.

The proposed amendments to §159.102 and §159.105 more accurately reflect TALCB's process to verify ownership eligibility for AMC in accordance with the Appraisal Subcommittee Policy.

The proposed amendments to §159.109 remove references to an outdated fee.

The proposed amendments to §159.201 clarify the guidelines apply to disciplinary actions and are not limited to revocation, suspension or denial, correct a reference to the Texas Appraisal Management Company Registration and Regulation Act; specify who can sign an agreed order in lieu of the chair of the Board, should the chair not be available or need to recuse him or herself; and provide for the Commissioner to designate who may sign an agreed resolution on his or her behalf.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

create or eliminate a government program;

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

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

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

create a new regulation;

expand, limit or repeal an existing regulation; and

increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.1. Definitions.

- (a) AMC--Appraisal management company.
- (b) AMC Act--Chapter 1104, Texas Occupations Code, Texas Appraisal Management Company Registration and Regulation Act.
- (c) Administrative law judge--A judge employed by the State Office of Administrative Hearings (SOAH).
- (d) Advertising--A written or oral statement or communication by or on behalf of an AMC that induces or attempts to induce a member of the public to use the services of the AMC, including but not limited to all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards.
- (e) Applicant--A person seeking to become registered or renew a registration under the AMC Act. [~~This term also includes a person seeking to renew a registration under the AMC Act.~~]
- (f) Appraisal firm--An entity that employs appraisers on an exclusive basis and receives compensation for performing appraisals and issuing appraisal reports in its own name.
- (g) Appraiser contact--A person designated by an AMC pursuant to §1104.103(b)(6) of the AMC Act to respond to and communicate with appraisers on the AMC's appraisal panel regarding appraisal assignments.
- (h) Board--The Texas Appraiser Licensing and Certification Board.
- (i) Commissioner--The Commissioner of the Board.
- (j) Day--A calendar day unless clearly indicated otherwise.
- (k) Federally Regulated Appraisal Management Company--an appraisal management company as defined in §1104.003(b) of the AMC Act.

(l) License--The whole or a part of any Board permit, certificate, approval, registration or similar form of permission required by Chapter 1103 or 1104, Texas Occupations Code.

(m) License holder--A person licensed or registered by the Board under the AMC Act.

(n) Party--The Board and each person named or admitted as a party.

(o) Person--Any individual, partnership, corporation, or legal entity.

(p) Primary contact--A person who meets the definition of "controlling person" in §1104.003 of the AMC Act and is designated by an AMC pursuant to §1104.104 of the AMC Act as the primary contact for all communication between the Board and the AMC.

(q) Respondent--Any person subject to the jurisdiction of the Board, registered or unregistered, against whom any complaint has been made.

(r) SOAH--State Office of Administrative Hearings.

(s) USPAP--Uniform Standards of Professional Appraisal Practice.

§159.3. *Appraisal Management Company Advisory Committee.*

(a) A quorum consists of three members of the committee.

(b) The committee may meet at the call of the chair or upon the request of a majority of its members. The committee shall meet at the request of the Board.

(c) Unless state law or Board rules require otherwise, meetings shall be conducted in accordance with Robert's Rules of Order.

(d) At the end of a term, members shall continue to serve until their successors are qualified.

(e) The committee is automatically abolished on December 31, 2026~~[September 1, 2022]~~, unless the Board subsequently establishes a different date.

§159.52. *Fees.*

(a) The Board will charge and the Commissioner will collect the following fees:

(1) a fee of \$3,300 for an application for a two-year registration;

(2) a fee of \$3,000 for a timely renewal of a two-year registration;

(3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;

(4) the national registry fee in the amount charged by the Appraisal Subcommittee for the AMC registry;

(5) a fee of \$500 for untimely payment of the AMC national registry fee;

(6) a fee of \$10 for each appraiser on a panel at the time of renewal of a registration;

(7) a fee of \$5 to add an appraiser to a panel in the Board's records;

(8) a fee of \$5 for the termination of an appraiser from a panel;

(9) a fee of \$50 to return to active status;

(10) a fee of \$50 for evaluation of an owner or primary contact's background history not submitted with an original application or renewal;

(11) any fee required by the Department of Information Resources for establishing and maintaining online applications or as a subscription or convenience fee for use of an online payment system; and

(12) a fee in the amount necessary to administer section 1104.052(c) of the AMC Act.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a payment that has been dishonored, and who have not made good on that payment within 30 days, for whatever reason, must submit all replacement fees in the form of a cashier's check, money order, or online credit card payment.

(c) AMCs registered with the Board must pay any annual registry fee as required under federal law. All registry fees collected by the Board will be deposited to the credit of the appraiser registry account in the general revenue fund. The Board will send the fees to the Appraisal Subcommittee as required by federal law.

§159.102. *Eligibility for Registration; Ownership.*

~~[(a) For the purpose of certifying to the Board that an applicant has reviewed the owners of the entity as required by the AMC Act and that no such owner has had a license to act as an appraiser denied, revoked, or surrendered in lieu of revocation unless the license was subsequently granted or reinstated, the applicant may rely on the Appraisal Subcommittee's online National Registry database.]~~

(a) ~~[(b)]~~ If an owner of the applicant has had a license to act as an appraiser denied, revoked, or surrendered, the Board may require the applicant to provide information concerning whether~~[demonstrate that]~~ the owner's license was denied, revoked, or surrendered for a non-substantive reason as determined by the Board.

(b) ~~[(e)]~~ For purposes of this Chapter, a nonsubstantive reason may include, but is not limited to:

(1) mistake; or

(2) failure to comply with technical requirements for renewal.

§159.103. *Applications.*

(a) An application must be accompanied by one completed and signed Owner/Primary Contact Background History form for the primary contact and each owner of more than 10% of the company.

(b) An application may be rejected if incomplete.

(c) An application ~~is~~may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes written request for the information or documentation.

(d) License holders must retain documents establishing ownership for a period of five years from the date the application was filed.

§159.105. *Denial of Registration or Renewal of Registration.*

(a) AMCs, persons who own more than 10%~~[any]~~ interest in an AMC, and individuals who act as the primary contact for an AMC must be honest, trustworthy, and reliable. Accordingly, such persons must satisfy the Board of their honesty, integrity, and trustworthiness before a registration may be issued and upon renewal.

(b) The board deems the following felonies and misdemeanors directly related to the field of appraisal management and suggestive of a lack of the requisite moral character:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (3) offenses against public administration;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (5) offenses involving moral turpitude; and
- (6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(c) In determining whether a criminal offense by an applicant, the primary contact, or an owner of any interest in the AMC prevents the issuance or renewal of a registration, the Board will consider the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a registration to provide appraisal management services;
- (3) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that which the person had previously been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to be involved, directly or indirectly, in performing the duties and discharge the responsibilities of AMC.

(d) In determining the present fitness of a person who has committed an offense under this section, the Board will consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(e) A person is presumed to lack the requisite moral character if less than two years has elapsed since the offense was committed.

(f) An applicant is presumed to be unfit to perform appraisal management services if the person has violated the appraiser independence standards of Section 129E of the Truth in Lending Act (15 U.S.C. §1601 et seq.). This presumption may be rebutted by credible evidence to the contrary.

(g) It is the responsibility of the applicant to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has maintained a record of

good conduct, and is current on the payment of any outstanding court costs, supervision fees, fines, and restitution.

(h) A currently incarcerated individual does not possess the required good moral character.

(i) The primary contact and each owner of more than 10% of the AMC must consent in writing to a criminal history background check at the time the AMC submits an application for registration or renewal.

(j) An applicant must provide information related to whether a~~certify it has reviewed each owner of any interest in the applicant and has verified that no~~ person who owns an interest in the applicant has:

- (1) had a license or certification to act as an appraiser denied, revoked, or surrendered in lieu of revocation;
- (2) the license or certification to act as an appraiser has not been subsequently granted or reinstated; and
- (3) the license or certification to act as an appraiser was denied, revoked, or surrendered in lieu of revocation for a nonsubstantive reason for the Board's determination~~[as determined by the Board]~~ under §159.102 of this chapter.

(k) An application for registration or renewal of registration that is denied by TALCB~~[Standards and Enforcement Services]~~ Division staff may be reviewed and reconsidered by the Commissioner if the applicant submits a written request for reconsideration within 10 days of notice of the denial. The right to request reconsideration is distinct from, and in addition to, an applicant's right to appeal an application denial before SOAH.

§159.109. Inactive Status.

(a) To elect to be placed on inactive status, a license holder must do the following:

- (1) file a request for inactive status on a form approved by the Board~~[and pay the required fee]~~; and
- (2) confirm in writing to the Board that the license holder has given written notice of its election to go inactive to all appraisers listed on the license holder's appraiser panel at least 30 days prior to filing the request for inactive status.

(b) In order to return from inactive status to active status, a license holder must submit to the Board a completed Request for Active Status form and proof of compliance with all outstanding requirements for active registration.

(c) A license holder that has elected or been placed on inactive status may not engage in any activity for which registration is required until an active registration has been issued by the Board.

(d) The appraiser panel of a license holder on inactive status will remain in place.

(e) A license holder may renew on inactive status. To renew on inactive status, a license holder must satisfy:

- (1) all requirements under subsection (a) of this section; and
- (2) all renewal requirements for an active registration under §159.108 of this chapter.

§159.201. Guidelines for Disciplinary Action [Revocation, Suspension, or Denial of a License].

(a) The Board may take disciplinary action~~[suspend or revoke a license issued under provisions of the AMC Act]~~, or deny issuing

or renewing a license to an applicant, any time it is determined that the person applying for, renewing, or holding the license or the AMC's primary contact:

(1) disregards or violates a provision of the AMC Act or Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board of the following with regard to any professional or occupational license held by the person in Texas or another jurisdiction not later than the 30th day after the date:

(A) disciplinary action becomes final against the person; or

(B) the person voluntarily surrenders any professional or occupational license;

(6) fails to comply with the USPAP edition in effect at the time of the appraisal or appraisal practice;

(7) acts or holds any person out as a registered AMC under the AMC Act or another state's act when not so licensed or certified;

(8) accepts payment for appraisal management services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraisal management services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate;

(11) offers to perform appraisal management services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a registration as an AMC revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

(14) procures a registration pursuant to the AMC Act by making false, misleading, or fraudulent representation;

(15) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation; or

(C) grossly negligent misrepresentation in the making of real estate appraiser services;

(16) fails to make good on a payment issued to the Board within 30 days after the Board has mailed a request for payment by certified mail to the license holder's primary contact as reflected in the Board's records;

(17) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

(18) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to provide appraisal management services;

(19) requires an appraiser to pay for or reimburse the AMC for a criminal history check;

(20) fails to comply with a final order of the Board; or

(21) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said person's or primary contact's address of record, or within the time period allowed if granted a written extension by the Board.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisal management practice;

(2) requirements for additional education by the AMC's controlling persons;

(3) monetary administrative penalties; and

(4) requirements for reporting appraisal management activity to the Board.

(d) A person applying for reinstatement after revocation or surrender of a registration must comply with all requirements that would apply if the registration had instead expired.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the AMC Act or under the laws of this State.

(f) The Board may not investigate under this section a complaint submitted either more than two years after the date of discovery or more than two years after the completion of any litigation involving the incident, whichever event occurs later, involving the AMC that is the subject of the complaint.

(g) Except as provided by Texas Penal Code §32.32(d), there will be no undercover or covert investigations conducted by authority of the AMC Act.

(h) The Board may report to the Appraisal Subcommittee any disciplinary action taken by the Board against an AMC required to register under the AMC Act.

§159.204. *Complaint Processing.*

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the AMC Act or Board rules that:

(1) evidence serious deficiencies, including:

- (A) Fraud;
- (B) Identity theft;
- (C) Unlicensed activity;
- (D) Ethical violations;
- (E) Violations of appraiser independence; or
- (F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

- (A) with knowledge;
- (B) deliberately;
- (C) willfully; or
- (D) with gross negligence.

(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Commissioner may delegate to staff the duty to dismiss complaints.

(d) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) will be referred to the appropriate prosecutorial authorities.

(e) Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(f) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be sent to the Respondent unless the complaint qualifies for covert investigation and the ~~TALCB~~[Standards and Enforcement Services] Division deems covert investigation appropriate.

(g) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(h) The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(i) Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act, Board rules or USPAP exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint will be dismissed with no further processing.

(j) A formal complaint will be opened and investigated by a staff investigator or peer investigative committee if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(k) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(l) The staff investigator or peer investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

(m) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act, Board rules, or USPAP;

(E) "Minor deficiencies" is defined as violations of the AMC Act, Board rules, or USPAP which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross neg-

ligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures;
- (iv) A final order which imposes one or more of the following:

- (I) Remedial measures;
- (II) Required adoption and implementation of written, preventative policies or procedures;
- (III) A probationary period with provisions for monitoring the AMC;
- (IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;

- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A revocation; and
- (ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules, or the Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act, Board rules or USPAP will result in a final order which imposes the following:

- (i) A revocation; and
- (ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

- (A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;
- (B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;
- (C) Requiring additional reporting requirements;
- (D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and
- (E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act, Board rules, or USPAP.

(n) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(o) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1104.2081[§1104.208(a)(3)] must be signed by:

(1) The Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

- (2) Respondent;
- (3) A representative of the TALCB [Standards and Enforcement Services] Division; and
- (4) The Commissioner or his or her designee.

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 19, 2022.

TRD-202203144

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 2, 2022

For further information, please call: (512) 936-3652



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.10, 703.11, 703.15, 703.24, 703.26

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §§703.11 (relating to the eligibility of certain grant recipient expenses to quality as matching grant funds) and 703.24 (relating to submission of corrections to grant recipient documentation supporting Financial Status Reports.) The Institute further proposes amendments to 25 Texas Administrative Code §§703.10, 703.15, and 703.26 to references to Uniform Grant Management Standards with Texas Grant Management Standards.

Background and Justification

The proposed amendment to §703.11(c) adds a new paragraph (7) allowing a grant recipient to count expenditures the grant recipient incurs for relocating its operations and personnel to Texas toward the grant recipient's matching funds obligation. Texas Health and Safety Code § 102.255(c) requires a research grant recipient to dedicate an amount of matching funds equal to one-half of the amount of the research grant awarded. Section 703.11 provides examples of eligible grant recipient expenditures to fulfill the matching funds requirement. Grant recipients who relocate to Texas to carry out the goals and objectives of their CPRIT grant may be eligible to count those relocation expenses as matching funds.

The proposed amendment to §703.24(a)(5) requires a grant recipient to provide information necessary to correct a deficiency in the supporting documentation of a Financial Status Report

(FSR) within five (5) business days of a request from the Institute. If the grant recipient fails to provide the requested information, the Institute may disapprove the FSR. Currently, CPRIT permits a grant recipient 21 days to respond to a request regarding FSR supporting documentation. Changing the response time to 5 business days will expedite review of FSR supporting documentation.

The proposed amendments to §§703.10(c)(11), 703.15(b)(3), and 703.26(b) update outdated references to Uniform Grant Management Standards (UGMS) in the Institute's administrative rules with the new Texas Grant Management Standards (TxGMS) references. The Comptroller of Public Accounts published TxGMS to replace UGMS effective 2022. The Institute refers grant recipients to TxGMS, when there are not Institute-specific guidelines within CPRIT's statute and/or administrative rules.

Fiscal Note

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

Public Benefit and Costs

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

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

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

Government Growth Impact Statement

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

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule change to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than October 3, 2022. The Institute asks parties

filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to kdoyle@cpriti.texas.gov or by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter.

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

§703.10. Awarding Grants by Contract.

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient.

(b) The Oversight Committee may delegate Grant Contract negotiation duties to the Chief Executive Officer and the General Counsel for the Institute. The Chief Executive Officer may enter into a written contract with the Grant Recipient on behalf of the Oversight Committee.

(c) The Grant Contract shall include the following provisions:

(1) If any portion of the Grant Contract has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to Intellectual Property Rights and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of materials created with Grant Award funds or related to the Cancer Research or Cancer Prevention project that is the subject of the Grant Award, including an acknowledgement of Institute funding and copyright ownership, if applicable:

(A) Acknowledgment of Institute funding must include the grant number of every Institute-funded grant contributing to the work memorialized in the publication; and

(B) Subparagraph (A) of this paragraph is effective beginning September 1, 2021;

(4) Repayment terms, including interest rates, to be enforced if the Grant Recipient has not used Grant Award funds for the purposes for which the Grant Award was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project, and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient;

(6) A statement that the Cancer Research or Cancer Prevention project is conducted with full consideration for the ethical and medical implications of the project and that the project will comply

with all federal and state laws regarding the conduct of the Cancer Research or Prevention project;

(7) Terms related to the Standards established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) to ensure that Grant Recipients, to the extent reasonably possible, demonstrate good faith effort to purchase goods and services for the Grant Award project from suppliers in this state and from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

(8) An agreement by the Grant Recipient to submit to regular inspection reviews of the Grant Award project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

(9) An agreement by the Grant Recipient to submit Grant Progress Reports to the Institute on a schedule specified by the Grant Contract that includes information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Institute funding;

(10) An agreement that, to the extent possible, the Grant Recipient will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development, or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the Grant Recipient will abide by the Texas ~~[Uniform]~~ Grant Management Standards ~~(TxGMS)~~ ~~[(UGMS)]~~ published ~~[adopted]~~ by the ~~Comptroller of Public Accounts Statewide Procurement Division~~ ~~[Governor's Office]~~, if applicable, unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and ~~TxGMS~~ ~~[(UGMS)]~~ shall be made by the Institute;

(12) An agreement that the Grant Recipient is under a continuing obligation to notify the Institute of any adverse conditions that materially impact milestones and objectives included in the Grant Contract;

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project will not be biased by conflicting financial interest of the Grant Recipient or any individuals associated with the Grant Award. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest policy governs the Grant Recipient;

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final tranche of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and

(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee;

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report, a final Grant Progress Report, an equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation;

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application, including any proposed temporary leave of absence of a Principal Investigator, Program Director, or Company Representative;

(23) An agreement that the Grant Recipient is legally responsible for the integrity of the fiscal and programmatic management of the organization; and

(24) An agreement that the Grant Recipient is responsible for the actions of its employees and other research collaborators, including third parties, involved in the project. The Grant Recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the Institute if the infraction is related to a Grant Award.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract, pursuant to the process prescribed in the Grant Contract, and trigger repayment of the Grant Award funds.

§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.

(a) Prior to the disbursement of Grant Award funds, the Grant Recipient of a Cancer Research Grant Award shall demonstrate that the Grant Recipient has an amount of Encumbered Funds equal to at least

one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award.

(1) The Grant Recipient's written certification of Matching Funds, as described in this section, shall be included in the Grant Contract.

(2) A Grant Recipient of a multiyear Grant Award may certify Matching Funds on a year-by-year basis for the amount of Award Funds to be distributed for the Project Year based upon the Approved Budget.

(3) A Grant Recipient receiving multiple Grant Awards may provide certification at the institutional level.

(4) Nothing herein restricts the Institute from requiring the Grant Recipient to demonstrate an amount of Encumbered Funds greater than one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. To the extent that a greater Matching Funds amount will be required, the Institute shall include the requirement in the Request for Applications and in the Grant Contract.

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code, subject to the following requirements:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient;

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement;

(3) Calculation of the portion of federal indirect cost rate credit associated with subcontracted work performed for the Grant Recipient shall be in accordance with the Grant Recipient's established internal policy; and

(4) If the Grant Recipient's federal indirect cost rate changes six months or less following the anniversary of the Effective Date of the Grant Contract, then the Grant Recipient may use the new federal indirect cost rate for the purpose of calculating the Grant Recipient's Matching Funds credit for the entirety of the Project Year.

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds must be spent directly on the Grant Project or spent on closely related work that supports, extends, or facilitates the Grant Project and may include:

(1) Federal funds, including, but not limited to, American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(2) State of Texas funds;

(3) funds of other states;

(4) Non-governmental funds, including private funds, foundation grants, gifts and donations;

(5) Unrecovered Indirect Costs not to exceed ten percent (10%) of the Grant Award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code.

(6) Funds contributed by a subcontractor or subawardee and spent on the Grant Project, so long as the subcontractor's or subawardee's portion of otherwise allowable Matching Funds for a Project Year may not exceed the percentage of the total Grant Funds paid to the subcontractor or subawardee for the same Project Year.

(7) Costs incurred by the Grant Recipient to relocate the Grant Recipient's operations and/or personnel to Texas.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as Encumbered Funds:

(1) In-kind costs;

(2) Volunteer services furnished to the Grant Recipient;

(3) Noncash contributions;

(4) Income earned by the Grant Recipient that is not available at the time of Grant Award;

(5) Pre-existing real estate of the Grant Recipient including building, facilities and land;

(6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(7) Other items as may be determined by the Oversight Committee.

(e) To the extent that a Grant Recipient of a multiyear Grant Award elects to certify Matching Funds on a Project Year basis, the failure to provide certification of Encumbered Funds at the appropriate time for each Project Year may serve as grounds for suspending reimbursement or advancement of Grant Funds for project costs or terminating the Grant Contract.

(f) In no event shall Grant Award funds for a Project Year be advanced or reimbursed, as may be appropriate for the Grant Award and specified in the Grant Contract, until the certification required by subsection (a) of this section is filed and approved by the Institute.

(g) No later than thirty (30) days following the due date of the FSR reflecting expenses incurred during the last quarter of the Grant Recipient's Project Year, the Grant Recipient shall file a form with the Institute reporting the amount of Matching Funds spent for the preceding Project Year.

(1) The Grant Recipient must provide all documentation, including proof of payment, showing that the Grant Recipient expended the required amount of Matching Funds on the CPRIT project for the preceding Project Year. The Institute will accept a general ledger from public or private institutions of higher education as proof of payment.

(2) The Institute will not review or approve the Grant Recipient's Matching Funds form until the Grant Recipient submits the form and all required documentation.

(h) If the Grant Recipient failed to expend Matching Funds equal to one-half of the actual amount of Grant Award funds distributed to the Grant Recipient for the same Project Year the Institute shall:

(1) Carry forward and add to the Matching Fund requirement for the next Project Year the dollar amount equal to the deficiency between the actual amount of Grant Award funds distributed and the actual Matching Funds expended, so long as the deficiency is equal to or less than twenty percent (20%) of the total Matching Funds required for the same period and the Grant Recipient has not previously had a Matching Funds deficiency for the project;

(2) Suspend distributing Grant Award funds for the project to the Grant Recipient if the deficiency between the actual amount of Grant Funds distributed and the Matching Funds expended is greater than twenty percent (20%) but less than fifty percent (50%) of the total Matching Funds required for the period;

(A) The Grant Recipient will have no less than eight months from the anniversary of the Grant Contract's effective date to demonstrate that it has expended Encumbered Funds sufficient to fulfill the Matching Funds deficiency for the project.

(B) If the Grant Recipient fails to fulfill the Matching Funds deficiency within the specified period, then the Grant Contract shall be considered in default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(3) Declare the Grant Contract in default if the deficiency between the actual amount of Grant Award funds distributed and the Matching Funds expended is greater than fifty percent (50%) of the total Matching Funds required for the period. The Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract; or

(4) Take appropriate action, including withholding reimbursement, requiring repayment of the deficiency, or terminating the Grant Contract if a deficiency exists between the actual amount of Grant Award funds distributed and the Matching Funds expended and it is the last year of the Grant Contract.

(i) Nothing herein shall preclude the Institute from taking action other than described in subsection (h) of this section based upon the specific reasons for the deficiency. To the extent that other action not described herein is taken by the Institute, such action shall be documented in writing and included in Grant Contract records. The options described in subsection (h)(1) and (2) of this section may be used by the Grant Recipient only one time for the particular project. A second deficiency of any amount shall be considered an event of default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(j) The Grant Recipient shall maintain adequate documentation supporting the source and use of the Matching Funds reported in the certification required by subsection (a) of this section. The Institute shall conduct an annual review of the documentation supporting the source and use of Matching Funds reported in the required certification for a risk-identified sample of Grant Recipients. Based upon the results of the sample, the Institute may elect to expand the review of supporting documentation to other Grant Recipients. Nothing herein restricts the authority of the Institute to review supporting documentation for one or more Grant Recipients or to conduct a review of Matching Funds documentation more frequently.

(k) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

§703.15. Financial Policies Applicable to Grant Awards.

(a) The Grant Recipient is responsible for managing the day-to-day operations of the activities supported by the Grant Award and is accountable to Institute for the performance of the Grant Award, including the appropriate expenditure of Grant Award funds by all parties and all other obligations of the Grant Recipient.

(b) The Grant Recipient must maintain a sound financial management system that provides appropriate fiscal controls and accounting procedures to ensure accurate preparation of reports by the Grant Contract and adequate identification of the source and application of Grant Award funds.

(1) The Grant Recipient may use its established controls and policies, as long as the controls and policies are consistent with requirements described in the Institute's administrative rules, the Grant Contract, and other applicable standards.

(2) The Grant Recipient's system of internal controls should encompass segregation of functions, proper authorization of transactions, proper recording of transactions, limited access to assets, and monitoring of internal controls. The extent to which internal controls are established is dependent upon the nature and size of the organization involved.

(3) The Grant Recipient's accounting system must conform to Generally Accepted Accounting Principles applicable to state and federal grant funds and conform to the standards for financial management set forth in the Texas [Uniform] Grant Management Standards (TxGMS).

(4) The Institute may review the adequacy of the financial management system of any Grant Recipient to ensure that the system is appropriate to fulfill the Institute's administrative rules, the Grant Contract, and other applicable standards.

(c) The Grant Recipient shall use cash basis accounting when reporting expenses to be reimbursed with Grant Award funds.

(1) A Grant Recipient utilizing an accrual basis of accounting in its normal operations must present expenses on a cash basis and reflect actual costs incurred during the payment period.

(2) A subcontractor is not required to record the adjustment in the general ledger; the adjustment should be documented by memo entries along with a reconciliation of the expense reported to the Institute and the expense recorded to the general ledger.

§703.24. Financial Status Reports.

(a) The Grant Recipient shall report expenditures to be reimbursed with Grant Award funds on the quarterly Financial Status Report form. The Grant Recipient must report all expenses for which it seeks reimbursement that the Grant Recipient paid during the fiscal quarter indicated on the quarterly Financial Status Report form.

(1) Expenditures shall be reported by budget category consistent with the Grant Recipient's Approved Budget.

(2) If the Grant Recipient seeks reimbursement for an expense it paid prior to the period covered by the current quarterly Financial Status Report but did not previously report to the Institute, the Grant Recipient must provide a written explanation for failing to claim the prior payment in the appropriate period.

(A) The Grant Recipient must submit the written explanation with any supporting documentation at the time that the Grant Recipient files its current Financial Status Report.

(B) The Institute shall consider the explanation and may approve reimbursement for the otherwise eligible expense. The Institute's decision whether to reimburse the expense is final.

(3) All expenditures must be supported with appropriate documentation showing that the costs were incurred and paid. A Grant Recipient that is a public or private institution of higher education as defined by §61.003, Texas Education Code is not required to submit supporting documentation for an individual expense totaling less than \$750 in the "supplies" or "other" budget categories.

(4) The Financial Status Report and supporting documentation must be submitted via the Grant Management System, unless the Grant Recipient is specifically directed in writing by the Institute to submit or provide it in another manner.

(5) The Institute may request in writing that a Grant Recipient provide more information or correct a deficiency in the supporting documentation for a Financial Status Report. If a Grant Recipient does not submit the requested information within five (5) business [24] days after the request is submitted, the Financial Status Report may [will] be disapproved by the Institute.

(A) Nothing herein restricts the Institute from disapproving the FSR without asking for additional information or prior to the submission of additional information.

(B) Nothing herein extends the FSR due date.

(6) The requirement to report and timely submit quarterly Financial Status Reports applies to all Grant Recipients, regardless of whether Grant Award funds are disbursed by reimbursement or in advance of incurring costs.

(b) Quarterly Financial Status Reports shall be submitted to the Institute within ninety (90) days of the end of the state fiscal quarter (based upon a September 1 - August 31 fiscal year). The Institute shall review expenditures and supporting documents to determine whether expenses charged to the Grant Award are:

(1) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(2) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(c) A Grant Award with a Grant Contract effective date within the last quarter of a state fiscal year (June 1 - August 31) will have an initial financial reporting period beginning September 1 of the following state fiscal year.

(1) A Grant Recipient that incurs Authorized Expenses after the Grant Contract effective date but before the beginning of the next state fiscal year may request reimbursement for those Authorized Expenses.

(2) The Authorized Expenses described in paragraph (1) of this subsection must be reported in the Financial Status Report reflecting Authorized Expenses for the initial financial reporting period beginning September 1.

(d) Except as provided herein, the Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the Financial Status Report for that quarter is not submitted to the Institute within thirty (30) days of the Financial Status Report due date. Waiver of reimbursement of project costs incurred during

the reporting period also applies to Grant Recipients that have received advancement of Grant Award funds.

(1) For purposes of this rule, the "Financial Status Report due date" is ninety (90) days following the end of the state fiscal quarter.

(2) The Chief Executive Officer may approve a Grant Recipient's request to defer submission of the reimbursement request for the current fiscal quarter until the next fiscal quarter if, on or before the original Financial Status Report due date, the Grant Recipient submits a written explanation for the Grant Recipient's inability to complete a timely submission of the Financial Status Report.

(3) A Grant Recipient may appeal the waiver of its right to reimbursement of project costs.

(A) The appeal shall be in writing, provide good cause for failing to submit the Financial Status Report within thirty (30) days of the Financial Status Report due date, and be submitted via the Grant Management System.

(B) The Chief Executive Officer may approve the appeal for good cause. The decision by the Chief Executive Officer to approve or deny the grant recipient's appeal shall be in writing and available to the Grant Recipient via the Grant Management System.

(C) The Chief Executive Officer's decision to approve or deny the Grant Recipient's appeal is final, unless the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision by the Oversight Committee.

(D) The Grant Recipient may request that the Oversight Committee reconsider the Chief Executive Officer's decision regarding the Grant Recipient's appeal. The request for reconsideration shall be in writing and submitted to the Chief Executive Officer within 10 days of the date that the Chief Executive Officer notifies the Grant Recipient of the decision regarding the appeal as noted in subparagraph (C) of this paragraph.

(E) The Chief Executive Officer shall notify the Oversight Committee in writing of the decision to approve or deny the Grant Recipient's appeal. The notice should provide justification for the Chief Executive Officer's decision. In the event that the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision, the Chief Executive Officer shall provide the Grant Recipient's written request to the Oversight Committee at the same time.

(F) The Grant Recipient's request for reconsideration is deemed denied unless three or more Oversight Committee members request that the Chief Executive Officer add the Grant Recipient's request for reconsideration to the agenda for action at the next regular Oversight Committee meeting. The decision made by the Oversight Committee is final.

(G) If the Grant Recipient's appeal is approved by the Chief Executive Officer or the Oversight Committee, the Grant Recipient shall report the project costs and provide supporting documentation for the costs incurred during the reporting period covered by the appeal on the next available financial status report to be filed by the Grant Recipient.

(H) Approval of the waiver appeal does not connote approval of the expenditures; the expenditures and supporting documentation shall be reviewed according to subsection (b) of this section.

(I) This subsection applies to any waivers of the Grant Recipient's reimbursement decided by the Institute on or after September 1, 2015.

(4) Notwithstanding subsection (c) of this section, in the event that the Grant Recipient and Institute execute the Grant Contract

after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding Financial Status Report(s). The approval shall be in writing and maintained in the Grants Management System. The Chief Program Officer's approval may cover more than one Financial Status Report and more than one fiscal quarter.

(5) In order to receive disbursement of grant funds, the most recently due Financial Status Report must be approved by the Institute.

(e) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

§703.26. Allowable Costs.

(a) A cost is an Allowable Cost and may be charged to the Grant Award if it is reasonable, allocable, and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost; and is necessary for the performance of the Grant Award defined in the Scope of Work in the Grant Contract.

(2) A cost is allocable if the cost:

(A) Benefits the Grant Award either directly or indirectly, subject to Indirect Cost limits stated in the Grant Contract;

(B) Is assigned the Grant Award in accordance with the relative benefit received;

(C) Is allowed or not prohibited by state laws, administrative rules, contractual terms, or applicable regulations;

(D) Is not included as a cost or used to meet Matching Fund requirements for any other Grant Award in either the current or a prior period; and

(E) Conforms to any limitations or exclusions set forth in the applicable cost principles, administrative rules, state laws, and terms of the Grant Contract.

(3) A cost is adequately documented if the cost is supported by the organization's accounting records and documented consistent with §703.24 of this title (relating to Financial Status Reports).

(b) Grant Award funds must be used for Allowable Costs as provided by the terms of the Grant Contract, Chapter 102, Texas Health and Safety Code, the Institute's administrative rules, and the Texas [~~Uniform~~] Grant Management Standards (TxGMS) [~~UGMS~~] adopted by the Comptroller's Office. If guidance from the Uniform Grant Management Standards on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(c) An otherwise Allowable Cost will not be eligible for reimbursement if the Grant Recipient incurred the expense outside of the Grant Contract term, unless the Grant Recipient has received written approval from the Institute's Chief Executive Officer to receive reimbursement for expenses incurred prior to the effective date of the Grant Contract.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods

or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(2) Contributions to a contingency reserve or any similar provision for unforeseen events.

(3) Contributions and donations made to any individual or organization.

(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(7) An honorary gift or a gratuitous payment.

(8) Interest and other financial costs related to borrowing and the cost of financing.

(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(10) Liability insurance coverage.

(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(12) Professional association fees or dues for an individual employed by the Grant Recipient. Professional association fees or dues for the Grant Recipient's membership in business, technical, and professional organizations may be allowed, with prior approval from the Institute, if:

(A) the professional association is not involved in lobbying efforts; and

(B) the Grant Recipient demonstrates how membership in the professional association benefits the Grant Award project(s).

(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor working on a Grant Award project employs an individual who is a Relative of the Principal Investigator, Program Director, Company Representative, Authorized Signing Official, or any person designated as Key Personnel for the same Grant Award project (collectively referred to as "affected Relative"), and the Grant Recipient will be paying the subcontractor with Grant Award funds for any portion of the affected Relative's salary or the Relative submits payment requests on behalf of the subcontractor to the Grant Recipient for payment with Grant Award funds.

(A) For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds if the Grant Recipient notifies the Institute prior to finalizing the subcontract. The Chief Executive Officer must notify the Oversight Committee in writing of the decision to allow reimbursement for the otherwise unallowable expense.

(B) Nothing herein is intended to supersede a Grant Recipient's internal policies, to the extent that such policies are stricter.

(16) Fundraising.

(17) Tips or gratuities.

(f) Pursuant to Texas Health and Safety Code Section 102.203(b) the Institute may authorize reimbursement for one or more of the following expenses incurred by a cancer clinical trial participant that are associated with participating in a clinical trial and included in the Grant Recipient's Approved Budget:

(1) transportation, including car mileage, parking, bus fare, taxi or ride hailing fare exclusive of tips, and commercial economy class airfare within the borders of the State of Texas;

(2) lodging; and

(3) any cost reimbursed under a cancer clinical trial participation program established pursuant to Texas Health and Safety Code Chapter 51 (relating to Cancer Clinical Trial Participation Program).

(g) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

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 22, 2022.

TRD-202203178

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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For further information, please call: (512) 305-8487



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 259. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) AND COMMUNITY FIRST CHOICE (CFC) SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in the Texas Administrative Code (TAC), Title 26, Part 1, new Chapter 259, Community Living Assistance and Support Services (CLASS) Program and Community First Choice (CFC) Services, consisting of Subchapters A - J, comprised of §§259.5, 259.7, 259.9, 259.51, 259.53, 259.55, 259.57, 259.59, 259.61, 259.63, 259.65, 259.67, 259.69, 259.71, 259.73, 259.75, 259.77, 259.79, 259.81, 259.83, 259.85, 259.87, 259.89, 259.101,

259.103, 259.151, 259.153, 259.155, 259.157, 259.159, 259.161, 259.163, 259.165, 259.167, 259.169, 259.171, 259.201, 259.203, 259.205, 259.207, 259.209, 259.211, 259.213, 259.215, 259.217, 259.251, 259.253, 259.255, 259.257, 259.259, 259.261, 259.263, 259.265, 259.267, 259.271, 259.273, 259.275, 259.277, 259.279, 259.281, 259.283, 259.285, 259.287, 259.289, 259.301, 259.303, 259.305, 259.307, 259.309, 259.311, 259.313, 259.315, 259.317, 259.319, 259.321, 259.351, 259.353, 259.355, 259.357, 259.359, 259.360, 259.361, 259.363, 259.365, 259.367, 259.369, 259.371, 259.373, 259.401, and 259.451.

BACKGROUND AND PURPOSE

The Community Living Assistance and Support Services (CLASS) Program is a Medicaid waiver program approved by the Centers for Medicare & Medicaid Services (CMS) under §1915(c) of the Social Security Act. This waiver program provides community-based services and supports to eligible individuals as an alternative to services provided in an institutional setting. In the CLASS Program there are two types of program providers. One is the case management agency (CMA) and the other is the direct services agency (DSA).

One purpose of the proposed new rules is to move the CLASS Program rules from 40 TAC, Chapter 45 to 26 TAC, Chapter 259. The repeal of 40 TAC, Chapter 45, are proposed elsewhere in this issue of the *Texas Register*.

Another purpose of the proposed new rules is to ensure that the CLASS Program complies with the requirements in Title 42, Code of Federal Regulations (42 CFR), Chapter IV, Subchapter C, Part 441, Subpart G, §441.301(c)(1) - (5). In 2014, CMS amended this regulation to establish new requirements for Home and Community-Based Services (HCBS) Medicaid programs, including requirements for HCBS program settings and person-centered planning. CMS has given states until March 2023 to be in full compliance with the requirements in §441.301(c)(1) - (5). The proposed new rules will also ensure compliance with the requirements in 42 CFR, Chapter IV, Subchapter C, Part 441, Subpart K, §441.530, regarding Home and Community-Based Settings, and §441.540 regarding the Person-centered service plan, for Community First Choice (CFC) services because CFC services are available in the CLASS Program.

Additional purposes of the proposed new rules are described below.

The proposed new rules implement Texas Government Code §531.02161(b)(4) which requires HHSC to ensure that, if cost effective, clinically effective, and allowed by federal law, a Medicaid recipient has the option to receive certain services, including occupational therapy (OT), physical therapy (PT), and speech and language pathology as a telehealth service.

The proposed new rules require program providers to submit a translation of non-English documentation submitted to HHSC. The purpose of the proposed rule is to help ensure that HHSC's reviews of documentation are efficient.

The proposed new 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.

SECTION-BY-SECTION SUMMARY

New Subchapter A, Definitions, Description of Services, and Excluded Services

Proposed new §259.5, Definitions, defines terms used in the new chapter. The proposed rule is different from the current rule regarding definitions because the proposed rule includes definitions of "agency foster home," "enrollment IPP," "hospital," "inpatient chemical dependency treatment facility," "inperson or in-person," "institution for mental diseases," "mental health facility," "renewal IPP," "residential child-care facility," "revised IPP," "synchronous audio-visual," "telehealth service," "Texas Workforce Commission" and "videoconferencing." The proposed rule is different from the current rule because the definition of "own home or family home," a term used in proposed §259.51 regarding eligibility criteria, does not include as a prohibited residential setting, a setting in which two or more dwellings create a distinguishable residential area. Provisions consistent with 42 CFR §441.301(c)(5)(v) regarding settings that are presumed to have the qualities of an institution and that address a heightened scrutiny review conducted by CMS are included in proposed new §259.59, Requirements for Service Settings.

Proposed new §259.7, Description of the CLASS Program and CFC Option, describes the CLASS Program, lists the services available to an individual in the CLASS Program, restricts a DSA from providing and billing for habilitation only if the activity provided is transportation, describes community first choice (CFC), and lists the CFC services available to an individual in the CLASS Program.

Proposed new §259.9, Excluded Services, describes services not provided through the CLASS Program.

New Subchapter B, Eligibility, Enrollment, and Review

New Division 1, Eligibility and Maintenance of the CLASS Interest List

Proposed new §259.51, Eligibility Criteria for CLASS Program Services and CFC Services, describes the eligibility criteria for an individual to qualify for CLASS Program services and CFC services.

Proposed new §259.53, CLASS Interest List, describes how HHSC maintains the interest list for individuals interested in receiving services in the CLASS Program. The proposed rule is different from the current rule in how HHSC assigns an interest list date to an individual after the individual's name is removed from the interest list in accordance with subsection (g)(1) - (4) and the individual requests to be placed back on the list. In the current rule, if such an individual makes the request within 90 days after the individual's name was removed from the list, HHSC adds the individual's name to the CLASS interest list using the interest list date that was in effect at the time the individual's name was removed from the list. In the proposed rule, HHSC adds the individual's name to the CLASS interest list in this situation using the interest list date that was in effect at the time the individual's name was removed, only if the request to be placed back on the list is the individual's first request. Further, if the individual's request to be placed back on the list is made more than 90 days after the individual's name was removed from the list and the request is the individual's first request, the proposed rule provides that HHSC adds the individual's name to the interest list using the interest list date that was in effect at the time the individual's name was removed from the list, if HHSC determines that extenuating circumstances exist. If a request to be placed back on an interest list by an individual in these situations is not the individual's first request, the proposed

rule provides that the individual's name is added back using the date of the request as the interest list date. The reason for this change is to remove an incentive for an individual to repeatedly decline a written offer of CLASS Program services.

New Division 2, Enrollment Process, Person-Centered Service Planning, and Requirements for Service Settings

Proposed new §259.55, Written Offer of CLASS Program Services, describes the process for offering an individual enrollment and what the individual or legally authorized representative (LAR) must do to accept the offer to enroll into the CLASS Program. The proposed rule describes the reasons HHSC withdraws an offer of enrollment into the CLASS Program.

Proposed new §259.57, Person-Centered Planning Process, describes the person-centered planning process, including the activities involved in the process and requires an individual's service planning team to ensure the person-centered planning process is led by an individual to the maximum extent possible.

Proposed new §259.59, Requirements for Service Settings, requires a DSA to ensure that a setting in which an individual receives CLASS Program and CFC services meets certain criteria, including that the setting is based on the individual's preferences, and needs; it supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program; it ensures the individual's rights of privacy, dignity and respect; and it optimizes an individual's independence in making life choices. In addition, the proposed rule requires a DSA to ensure that a setting in which an individual receives a CLASS Program service or CFC service is not a setting presumed to have the qualities of an institution except that a CLASS Program service or a CFC service may be provided in a setting that is presumed to have the qualities of an institution if CMS determines through a heightened scrutiny review that the setting does not have the qualities of an institution and does have the qualities of home and community-based settings.

Proposed new §259.61, Process for Enrollment of an Individual, describes the process for offering an individual enrollment and enrolling an individual into the CLASS Program. The proposed rule is different from the current rule regarding the process for enrollment because it includes a requirement for a case manager to provide an oral and written explanation to the individual and LAR or actively involved person about the use of electronic visit verifications as required by 1 TAC Chapter 354, Subchapter O.

Proposed §259.63, Determination by HHSC of Whether an Individual Meets LOC VIII Criteria, describes the process to determine whether an individual meets the level of care (LOC) VIII criteria.

Proposed new §259.65, Development of an Enrollment IPC, describes the process for the development of an enrollment individual plan of care (IPC). The proposed rule is different from the current rule because the proposed rule allows a service planning team meeting to be held in person or by videoconferencing and adds the requirements for reviewing, signing, and dating a proposed enrollment IPC if the meeting is held in person or by videoconferencing.

Proposed new §259.67, Development of IPPs, describes the process for the development of an enrollment, renewal, and revised individual program plan (IPP). The proposed rule is different from the current rule because the proposed rule describes what must be included in an IPP.

Proposed new §259.69, HHSC's Review of a Proposed Enrollment IPC, describes HHSC's process for reviewing a proposed enrollment IPC.

Proposed new §259.71, CDS Option, requires a case manager to inform an individual and LAR or actively involved person of the consumer directed services (CDS) option and the CLASS Program services and CFC services available through the CDS option. The proposed rule also provides that if an individual chooses to receive a service through the CDS option, a case manager must perform specific activities including documenting the choice of financial management services agency (FMSA).

Proposed new §259.73, Service Limits, describe the service limits for certain CLASS Program services.

New Division 3, Reviews

Proposed new §259.75, Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria, describes the DSA and CMA requirements regarding an annual review conducted by HHSC to determine whether an individual meets the LOC VIII criteria. The proposed rule also describes the process that occurs if an individual's LOC VIII expires before HHSC determines whether the individual meets the LOC VIII criteria. The proposed rule is different from the current rule because the proposed rule specifies the requirement for a registered nurse to complete an annual nursing assessment in person.

Proposed new §259.77, Renewal IPC and Requirement for Authorization to Continue Services, describes the IPC period and requires a case manager to submit a proposed renewal IPC and obtain authorization from HHSC for the proposed renewal IPC to continue providing services to an individual after the expiration of the IPC period.

Proposed new §259.79, Renewal and Revision of an IPC, describes the process for developing a renewal IPC and a revision IPC. The proposed rule is different from the current rule regarding renewal and revision of an IPP and IPC because it does not include the annual requirement for the case manager to obtain the signature of the individual or LAR on a Waiver Program Verification of Freedom of Choice form documenting the individual's or LAR's choice of the CLASS Program over the Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program because CMS requires this signature only at enrollment.

Proposed new §259.81, Revised IPC and Revised IPP for Services Provided to Prevent Immediate Jeopardy, describes the process for a DSA to obtain approval from HHSC for certain services provided to an individual that are not included on the individual's IPC because the services were necessary to prevent the individual's health and safety from being placed in immediate jeopardy.

Proposed new §259.83, Utilization Review of an IPC by HHSC, describes the purpose of a utilization review of an IPC conducted by HHSC, requires a program provider to submit documentation supporting an IPC to HHSC if requested by HHSC and describes the processes that are followed if a review by HHSC results in a determination that a CLASS Program service or CFC service will be terminated, denied, or reduced.

Proposed new §259.85, Tracking Annual Renewal of an ID/RC Assessment by a DSA, requires a DSA to have written policies and procedures to ensure compliance with proposed §259.75(a)(2) and (3), relating to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria, and that include

a written electronic tracking system that alerts the DSA to activities that must occur for the DSA to timely submit documentation to HHSC.

Proposed new §259.87, Tracking Annual Renewal of an IPC by a CMA, requires a CMA to have written policies and procedures to ensure compliance with §259.79(g)(2)(A), relating to Renewal and Revision of an IPC, and that include a written electronic tracking system that alerts the CMA to activities that must occur for the CMA to timely submit documentation to HHSC.

New Division 4, Service Backup Plans

Proposed new §259.89, Service Backup Plans, describes the requirements for the development and revision of a service backup plan for each service identified as critical.

New Subchapter C, Rights and Responsibilities of an Individual

Proposed new §259.101, Individual's Right to a Fair Hearing, provides that an individual is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A, relating to Uniform Fair Hearing Rules.

Proposed new §259.103, Mandatory Participation Requirements of an Individual, describes the requirements an individual must comply with while receiving CLASS Program services and CFC services.

New Subchapter D, Transfer, Denial, Suspension, Reduction, and Termination of Services

Proposed new §259.151, Coordination of Transfers, describes the process for an individual to transfer to a different CMA or DSA or FMSA.

Proposed new §259.153, Denial of a Request for Enrollment into the CLASS Program, describes the basis and process for HHSC to deny an individual's request for enrollment into the CLASS Program.

Proposed new §259.155, Denial of a CLASS Program Service or CFC Service, describes the basis and process for HHSC to deny a CLASS Program service or CFC service.

Proposed new §259.157, Suspension of CLASS Program Services or CFC Services, describes the basis and process for HHSC to suspend an individual's CLASS Program services or CFC services.

Proposed new §259.159, Reduction of a CLASS Program Service or CFC Service, describes the basis and process for HHSC to reduce an individual's CLASS Program service or CFC service.

Proposed new §259.161, Termination of CLASS Program Services and CFC Services with Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements, describes the basis and process for HHSC to terminate an individual's CLASS Program services and CFC services when advance notice of the termination is required for reasons other than non-compliance with mandatory participation requirements.

Proposed new §259.163, Termination of CLASS Program Services and CFC Services with Advance Notice Because of Non-compliance with Mandatory Participation Requirements, describes the basis and process for HHSC to terminate an individual's CLASS Program services and CFC services when advance notice of the termination is required because of non-compliance with mandatory participation requirements.

Proposed new §259.165, Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy, describes the basis and process for HHSC to terminate an individual's CLASS Program services and CFC services without advance notice for reasons other than behavior causing immediate jeopardy.

Proposed new §259.167, Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy, describes the basis and process for HHSC to terminate an individual's CLASS Program Services and CFC Services without advance notice because of behavior causing immediate jeopardy.

Proposed new §259.169, Information About Services After Termination, requires a case manager to, if the individual's CLASS Program and CFC services are terminated, inform the individual of alternative community services and institutional services.

Proposed new §259.171, Requirement to Submit a Fair Hearing Request Summary to HHSC, describes the requirement for a CMA to submit to HHSC a summary of a fair hearing request made by an individual.

New Subchapter E, Support Family Services

New Division 1, Introduction

Proposed new §259.201, Contracting Requirements, requires the support family agency to comply with the proposed new chapter and with 40 TAC Chapter 49, relating to Contracting for Community Services.

Proposed new §259.203, Eligibility, describes the eligibility criteria to receive support family services.

New Division 2, Support Family Agency

Proposed new §259.205, Support Family Agency Functions, describes the required functions of a support family agency.

Proposed new §259.207, Pre-Placement Activities, describes the requirements that a support family agency must comply with prior to an individual being placed with a support family.

Proposed new §259.209, Placement, describes the requirements for a support family, an LAR, and the support family agency, including participating in the service planning team meeting to develop a transition plan for an individual who will receive support family services.

Proposed new §259.211, Ongoing Support, describes the requirements for the support family agency after the individual has been placed with a support family.

Proposed new §259.213, Monthly Monitoring, describes the monitoring requirements for the support family, including visiting the home of the support family monthly.

New Division 3, Support Families

Proposed new §259.215, Support Family Requirements, describes requirements of a support family including a limit on the number of individuals to whom the support family may provide services.

Proposed new §259.217, Support Family Duties, describes the requirements related to the provision of services by a support family.

New Subchapter F, Adaptive Aids, Minor Home Modifications, and CFC ERS

New Division 1, Adaptive Aids

Proposed new §259.251, Items and Services Purchasable as an Adaptive Aid, describes the adaptive aids that may be purchased or leased in the CLASS Program and requires that an adaptive aid be the exclusive property of the individual for whom it is provided.

Proposed new §259.253, Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance, describes the maximum amount HHSC will approve for adaptive aids and requirements related to requesting authorization for repair and maintenance of an adaptive aid.

Proposed new §259.255, Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than \$500, describes the process for a DSA to request authorization for an adaptive aid costing less than \$500.

Proposed new §259.257, Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More, describes the process for a DSA to request authorization to purchase an adaptive aid costing more than \$500.

Proposed new §259.259, Requirements for Specifications for an Adaptive Aid, requires a DSA to obtain specifications for an adaptive aid that costs \$500 or more and describes the process to obtain the specifications.

Proposed new §259.261, Requirements for Bids of an Adaptive Aid, requires a DSA to obtain bids for an adaptive aid that costs \$500 or more and describes the process for a DSA to obtain the bids.

Proposed new §259.263, Time Frames for Providing Adaptive Aids to Individuals, describes the required time frames that an individual must receive an adaptive aid from the DSA.

Proposed new §259.265, Cost Effective Delivery of Adaptive Aid, requires the DSA to ensure that if an adaptive aid is delivered to an individual by a commercial carrier, the most cost-effective carrier is used. The proposed rule prohibits a program provider from using a commercial carrier to provide overnight delivery unless certain circumstances are met.

Proposed new §259.267, Requirements of DSA Following Provision of Adaptive Aid, describes the requirements a DSA must comply with after provision of an adaptive aid, including that the individual, unpaid caregiver, and service providers are provided with appropriate orientation and training in the proper use of the adaptive aid.

New Division 2, Minor Home Modifications

Proposed new §259.271, Items or Services Purchasable as a Minor Home Modification, describes the minor home modifications that may be purchased in the CLASS Program and also lists examples of modifications that may not be purchased.

Proposed new §259.273, Authorization Limit for Minor Home Modifications and Amount for Repair and Maintenance, describes the maximum amount HHSC approves as payment for minor home modifications. The proposed rule also addresses the process that must be used to request approval for repair and maintenance of a minor home modification.

Proposed new §259.275, Requirements for Authorization to Purchase a Minor Home Modification, describes the process a DSA must follow to obtain authorization to purchase a minor home modification.

Proposed new §259.277, Requirements for Specifications for a Minor Home Modification, describes the process a DSA must follow to obtain specifications from a person who has experience in constructing home modifications.

Proposed new §259.279, Bid Requirements for a Minor Home Modification, requires a DSA to obtain bids for a minor home modification that costs \$1000 or more and describes the process to obtain the bids.

Proposed new §259.281, Inspection of a Minor Home Modification, describes DSA requirements related to an inspection of a minor home modification.

Proposed new §259.283, Time Frames for Completion of Minor Home Modification, describes the DSA requirements related to the completion of a minor home modification, including required time frames.

Proposed new §259.285, Repair or Replacement of Minor Home Modification, describes when HHSC will authorize repair or maintenance of a minor home modification and when the DSA must repair or replace a minor home modification.

Proposed new §259.287, Satisfaction of Minor Home Modification, describes the process for a DSA to determine whether the individual or LAR is satisfied with a minor home modification.

New Division 3, CFC ERS

Proposed new §259.289, CFC ERS, describes DSA requirements related to the provision of CFC emergency response services (CFC ERS).

New Subchapter G, Additional CMA Requirements

Proposed new §259.301, CMA: Compliance with Rules, requires that a CMA comply with certain rules.

Proposed new §259.303, Protection of an Individual, requires a CMA to have written policies and procedures about specified topics to protect an individual. The proposed rule requires a CMA to report critical incidents to HHSC and the DSA. The proposed rule also requires a CMA program director who receives a copy of an HHSC initial intake report or a final investigative report from an FMSA to give a copy of the report to the individual's case manager.

Proposed new §259.305, DSA Services Outside the Catchment Area, describes the requirements for a CMA if notified by the DSA that an individual is receiving certain CLASS Program services or CFC services outside the catchment area in which the individual resides. The proposed rule also describes requirements for the case manager if the DSA declines a request to allow services to be provided outside the catchment area.

Proposed new §259.307, Qualifications of CMA Staff Persons, describes the required qualifications for a CMA program director and case manager.

Proposed new §259.309, Training of CMA Staff Persons and Volunteers, describes the training requirements for a CMA staff person and volunteer. The proposed rule is different from the current rule on training because the proposed rule requires a CMA to ensure a case manager completes a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the case manager's date of hire.

Proposed new §259.311, CMA Service Delivery, describes certain requirements for a CMA regarding service delivery, includ-

ing a limitation on the number of individuals assigned to a case manager; a requirement that a case manager have a monthly in-person or telephone contact with an individual, LAR, or other persons acting on behalf of the individual; a requirement for a sufficient number of case managers to provide case management; and a requirement to assist an individual who may need cognitive rehabilitation therapy.

Proposed new §259.313, CMA: Documentation of Services Delivered and Recordkeeping, describes the requirements for the documentation of services provided and the documentation that must be included in an individual's record.

Proposed new §259.315, CMA: Quality Management Process, requires a CMA to conduct an annual survey of individuals, LARs, and actively involved persons to determine satisfaction with the case management provided. In addition, the proposed rule requires a CMA to annually review all final investigative reports from HHSC and critical incident data and identify program process improvements based on the review.

Proposed new §259.317, CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual, requires a CMA, service provider, staff person, volunteer, or controlling person who knows or suspects that an individual is being or has been abused, neglected, or exploited, to report the allegation of abuse, neglect, or exploitation.

Proposed new §259.319, CMA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual, describes the requirements related to a report and investigation of an allegation of abuse, neglect, or exploitation. In addition, the proposed rule prohibits a CMA from retaliating against a staff person, an individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual.

Proposed new §259.321, CMA: Requirement for Translation, requires a CMA who submits documentation to HHSC containing information that is not in English, to at the same time, submit a translation of the information in English.

New Subchapter H, Additional DSA Requirements

Proposed new §259.351, DSA: Compliance with Rules, requires that a DSA comply with certain rules.

Proposed new §259.353, DSA: Protection of an Individual, requires a DSA to have written policies and procedures about specified topics to protect an individual. The proposed rule also requires a DSA to report critical incidents to HHSC and the CMA.

Proposed new §259.355, Qualifications of DSA Staff Persons, describes the required qualifications for a program director of the DSA and service providers, including nurses and service providers of professional and specialized therapies.

Proposed new §259.357, Training of DSA Staff Persons, Service Providers, and Volunteers, describes the training requirements for a DSA staff person, service provider, and volunteer. The proposed rule is different from the current rule on training because the proposed rule requires a program provider to ensure a DSA staff person who participates as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

Proposed new §259.359, DSA: Service Delivery, describes certain requirements for a DSA regarding service delivery, including requirements for an individual who obtains a plan of care for the

provision of cognitive rehabilitation therapy and the required activities when the DSA accepts or declines an individual's request to receive certain services outside the DSA's catchment area.

Proposed new §259.360, Providing Physical Therapy, Occupational Therapy, and Speech and Language Pathology as a Telehealth Service, allows a service provider of PT, OT, or speech and language pathology to provide PT, OT, or speech and language pathology to an individual as a telehealth service unless the service is required to be provided in person in accordance with the Texas Medicaid Provider Procedures Manual. The proposed rule describes the requirements for providing PT, OT, or speech and language pathology as a telehealth service, including obtaining the individual's or LAR's consent before the provision of the telehealth service. The proposed rule also sets forth the PT, OT, or speech and language pathology services that must be provided to an individual in person.

Proposed new §259.361, Respite and Dental Treatment, describes the maximum amount of respite an individual may receive and the DSA requirements related to the provision of respite. The proposed rule also describes the maximum amount HHSC approves as payment to a DSA for dental treatment and adaptive aids and process a DSA must follow to request authorization to purchase dental treatment.

Proposed new §259.363, DSA: Documentation of Services Delivered and Recordkeeping, describes the requirements for the documentation of services provided and the documentation that must be included in an individual's record.

Proposed new §259.365, Employment Assistance and Supported Employment, describes DSA requirements related to the provision of employment assistance and supported employment.

Proposed new §259.367, Prohibition of Seclusion, prohibits a DSA from using seclusion.

Proposed new §259.369, DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual, requires a DSA, service provider, staff person, volunteer, or controlling person who knows or suspects that an individual is being or has been abused, neglected, or exploited, to report the allegation of abuse, neglect, or exploitation.

Proposed new §259.371, DSA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual, describes the requirements related to a report and investigation of an allegation of abuse, neglect, or exploitation. In addition, the proposed rule prohibits a DSA from retaliating against a service provider, staff person, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual.

Proposed new §259.373, DSA: Requirement for Translation, requires a DSA who submits documentation to HHSC containing information that is not in English, to at the same time, submit a translation of the information in English.

New Subchapter I, Fiscal Monitoring

Proposed new §259.401, Financial Errors, describes the circumstances by which HHSC will apply an error made by a program provider to the amount HHSC reimburses the program provider.

New Subchapter J, Declaration of Disaster

Proposed new §259.451, Exceptions to Certain Requirements During Declaration of Disaster, provides that HHSC may allow program providers 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 if it allows an exception to be used and the date an allowed exception must no longer be used. The proposed rule also defines "disaster area."

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there may be an additional cost to state government if HHSC approves a request for an individual in a disaster area to exceed the service limits for an adaptive aid by \$5,000 or to exceed the service limit for a minor home modification by \$3,750. However, due to the varying nature and unknown timeline of a disaster, HHSC lacks sufficient information to provide an estimate of these costs.

Trey Wood has also determined that there are no foreseeable fiscal implications to either costs or revenues of local governments for the first five years the rule is in effect.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that the rules could have an adverse economic effect on small businesses and micro-businesses due to the cost to comply.

Currently there is a total of 235 CLASS CMAs and DSAs, but HHSC lacks the data to estimate how many of these program providers are small businesses or micro-businesses. No rural communities contract to provide services in the CLASS Program.

HHSC did not consider any alternative methods for the proposed rule requiring a DSA and CMA to submit a translation of information in English if the DSA or CMA submits documentation to HHSC containing information that is not in English, because there is no alternative method that would achieve the purpose of ensuring that HHSC's reviews of the documentation submitted are efficient.

HHSC did not consider any alternative methods for the proposed rule requiring certain DSA staff persons to complete HHSC's

web-based Introductory Training on the person-centered planning process because the training is based on a federal regulation. HHSC has no regulatory flexibility in achieving the goals of the federal program.

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 will benefit from the implementation of federal regulations that help ensure an individual receives services that are person-centered, promote the autonomy of the individual, and help ensure that CLASS Program services and CFC services are provided in a setting that is integrated in the greater community.

Trey Wood has also determined that for the first five years the rules are in effect, CLASS Program CMAs and DSAs may incur a cost to submit a translation of information in English if the program provider submits documentation to HHSC containing information that is not in English. DSAs may incur a cost based on the new requirement for certain staff to complete HHSC's web-based Introductory Training on the person-centered planning process. However, HHSC lacks sufficient information to provide 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 26, 2022 at 1:00 p.m. (central time). The link to register for the webinar meeting is <https://attendee.gotowebinar.com/register/5797564706801514763>.

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 21R133" in the subject line.

SUBCHAPTER A. DEFINITIONS, DESCRIPTION OF SERVICES, AND EXCLUDED SERVICES

26 TAC §§259.5, 259.7, 259.9

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.

§259.5. Definitions.

The following words and terms, when used in this chapter, 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) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

- (A) interactions with the individual;
- (B) availability to the individual for assistance or support when needed; and
- (C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(3) Adaptive aids--A Community Living Assistance and Support Services (CLASS) Program service that:

- (A) enables an individual to retain or increase the ability to perform activities of daily living (ADLs) or perceive, control, or communicate with the environment in which the individual lives; and
- (B) meets one of the following criteria:

(i) is an item included in the list of adaptive aids in the *Community Living Assistance and Support Services Provider Manual*; or

(ii) is the repair or maintenance of an item on the list of adaptive aids in the *Community Living Assistance and Support Services Provider Manual* that is not covered by a warranty.

(4) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by an adaptive behavior screening assessment.

(5) Adaptive behavior level--The categorization of an individual's functioning level based on a standardized measure of adaptive behavior. There are four adaptive behavior levels ranging from mild limitations in adaptive skills (I) through profound limitations in adaptive skills (IV).

(6) Adaptive behavior screening assessment--A standardized assessment used to determine an individual's adaptive behavior level, and conducted using the current version of one of the following assessment instruments:

(A) American Association of Intellectual and Developmental Disabilities (AAIDD) Adaptive Behavior Scales (ABS);

(B) Inventory for Client and Agency Planning (ICAP);

(C) Scales of Independent Behavior; or

(D) Vineland Adaptive Behavior Scales.

(7) ADLs--Activities of daily living. Basic personal everyday activities, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

(8) Agency foster home--This term has the meaning set forth in Texas Human Resources Code §42.002.

(9) Alarm call--A signal transmitted from an individual's Community First Choice emergency response services (CFC ERS) equipment to the CFC ERS response center indicating that the individual needs immediate assistance.

(10) ALF--Assisted living facility. A facility licensed in accordance with Texas Health and Safety Code (THSC), Chapter 247, Assisted Living Facilities.

(11) Alleged perpetrator--A person alleged to have committed an act of abuse, neglect, or exploitation of an individual.

(12) Aquatic therapy--A specialized therapy that involves a low-risk exercise method performed in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(13) Audio-only--An interactive, two-way audio communication platform that only uses sound.

(14) Auditory integration training/auditory enhancement training--A CLASS Program service that provides specialized training to assist an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(15) Auxiliary aid--A service or device that enables an individual with impaired sensory, manual, or speaking skills to participate in the person-centered planning process. An auxiliary aid includes interpreter services, transcription services, and a text telephone.

(16) Behavior support plan--A comprehensive, individualized written plan based on a current functional behavior assessment that includes specific outcomes and behavioral techniques designed to teach or increase adaptive skills and decrease or eliminate target behaviors.

(17) Behavioral support--A CLASS Program service that provides specialized interventions to assist an individual in increasing adaptive behaviors and replacing or modifying behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) conducting a functional behavior assessment;

(B) developing an individualized behavior support plan;

(C) training and consulting with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluating the effectiveness of the behavior support plan;

(E) modifying, as necessary, the behavior support plan based on monitoring and evaluating the plan's effectiveness; and

(F) counseling and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control challenging or socially unacceptable behaviors.

(18) Business day--Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

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

(20) Case management--A CLASS Program service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's individual plan of care (IPC);

(D) coordinating the provision of CLASS Program services and CFC services;

(E) monitoring the effectiveness of the CLASS Program services and CFC services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services and non-CFC services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(21) Case manager--A service provider of case management.

(22) Catchment area--As determined by the Texas Health and Human Services Commission (HHSC), a geographic area composed of multiple Texas counties.

(23) CDS option--Consumer directed services option. A service delivery option defined in 40 TAC §41.103 (relating to Definitions).

(24) CFC--Community First Choice.

(25) CFC ERS--CFC emergency response services. A CFC service that provides backup systems and supports used to ensure continuity of services and supports. CFC ERS includes electronic devices and an array of available technology, personal emergency response systems, and other mobile communication devices.

(26) CFC ERS provider--The entity directly providing CFC ERS to an individual, which may be the DSA or a contractor of the DSA.

(27) CFC FMS--CFC financial management services. A CFC service provided to an individual who receives only CFC PAS/HAB through the CDS option.

(28) CFC PAS/HAB--CFC personal assistance services/habilitation. A CFC service:

(A) that consists of:

(i) personal assistance services, which provides assistance to an individual in performing ADLs and instrumental activities of daily living (IADLs) based on the individual's person-centered service plan, including:

(I) non-skilled assistance with the performance of the ADLs and IADLs;

(II) household chores necessary to maintain the home in a clean, sanitary, and safe environment;

(III) escort services, which consist of accompanying and assisting an individual to access services or activities in the community, but do not include transporting an individual; and

(IV) assistance with health-related tasks; and

(ii) habilitation, which provides assistance to an individual in acquiring, retaining, and improving self-help, socialization, and daily living skills and training the individual on ADLs, IADLs, and health-related tasks, including:

(I) self-care;

(II) personal hygiene;

(III) household tasks;

(IV) mobility;

(V) money management;

(VI) community integration, including how to get around in the community;

(VII) use of adaptive equipment;

(VIII) personal decision making;

(IX) reduction of challenging behaviors to allow individuals to accomplish ADLs, IADLs, and health-related tasks; and

(X) self-administration of medication; and

(B) does not include transporting the individual, which means driving the individual from one location to another.

(29) CFC support consultation--A CFC service that provides support consultation to an individual who receives only CFC PAS/HAB through the CDS option.

(30) CFC support management--A CFC service that provides training on how to select, manage, and dismiss an unlicensed service provider of CFC PAS/HAB.

(31) CFR--Code of Federal Regulations.

(32) CLASS Program--The Community Living Assistance and Support Services Program.

(33) CMA--Case management agency. A program provider that has a contract with HHSC to provide case management.

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

(35) Cognitive rehabilitation therapy--A CLASS Program service that:

(A) assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells or brain chemistry in order to enable the individual to compensate for lost cognitive functions; and

(B) includes reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems.

(36) Competitive employment--Employment that pays an individual at least the minimum wage if the individual is not self-employed.

(37) Continued family services--A CLASS Program service described in §259.217 of this chapter (relating to Support Family Duties) provided to an individual who:

(A) is 18 years of age or older;

(B) resides with a support family, as described in §259.215 of this chapter (relating to Support Family Requirements); and

(C) was receiving support family services immediately before receiving continued family services.

(38) Contract--A provisional contract that HHSC enters into in accordance with 40 TAC §49.208 (relating to Provisional Contract Application Approval) that has a term of no more than 3 years, not including any extension agreed to in accordance with 40 TAC §49.208(e) or a standard contract that HHSC enters into in accordance with 40 TAC §49.209 (relating to Standard Contract) that has a term of no more than five years, not including any extension agreed to in accordance with 40 TAC §49.209(d).

(39) Controlling person--A person who:

(A) has an ownership interest in a program provider;

(B) is an officer or director of a corporation that is a program provider;

(C) is a partner in a partnership that is a program provider;

(D) is a member or manager in a limited liability company that is a program provider;

(E) is a trustee or trust manager of a trust that is a program provider; or

(F) because of a personal, familial, or other relationship with a program provider, is in a position of actual control or authority with respect to the program provider, regardless of the person's title.

(40) Denial--An action taken by HHSC that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service or a CFC service requested on an IPC that was not authorized on the prior IPC.

(41) Dental treatment--A CLASS Program service that:

(A) consists of the following:

(i) emergency dental treatments, which are procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatments, which are examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatments, which include fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatments, which are procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labiolingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

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

(43) Dietary services--A CLASS Program service that provides nutrition services, as defined in Texas Occupations Code §701.002.

(44) Direct services--Includes the following services:

(A) CLASS Program services other than case management, FMS, support consultation, support family services, continued family services, and TAS;

(B) CFC PAS/HAB;

(C) CFC ERS; and

(D) CFC support management.

(45) DSA--Direct services agency. A program provider that has a contract with HHSC to provide direct services.

(46) Employment assistance--A CLASS Program service that provides assistance to an individual to help the individual locate competitive employment in the community to the same degree of access as individuals not receiving CLASS Program services.

(47) Enrollment IPC--The first individual plan of care (IPC) for an individual developed before the individual's enrollment into the CLASS Program.

(48) Enrollment IPP--The first individual program plan (IPP) for an individual developed before the individual's enrollment into the CLASS Program in accordance with §259.67 of this chapter (relating to Development of IPPs).

(49) 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.

(50) FMS--Financial management services. A CLASS Program service that is defined in 40 TAC §41.103 and is provided to an individual participating in the CDS option.

(51) FMSA--Financial management services agency. An entity, as defined in 40 TAC §41.103, that provides FMS.

(52) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(53) Functional behavior assessment--An evaluation that is used to determine the underlying function or purpose of an individual's behavior, so an effective behavior support plan can be developed.

(54) Good cause--As determined by HHSC, a reason outside the control of a CFC ERS provider that is an acceptable reason for the CFC ERS provider's failure to comply.

(55) Habilitation--A CLASS Program service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting in person with an individual who is awake to train the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) household tasks;

(iv) mobility;

(v) money management;

(vi) community integration;

(vii) use of adaptive equipment;

(viii) management of caregivers;

(ix) personal decision making;

(x) interpersonal communication;

(xi) reduction of challenging behaviors;

(xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting in person with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

- (IV) money management;
- (V) community integration;
- (VI) use of adaptive equipment;
- (VII) self-administration of medication;
- (VIII) reinforce any therapeutic goal of the individual;
- (IX) provide transportation to the individual; and
- (X) protect the individual's health, safety and security;

(ii) interacting in person or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting in person with an individual:

- (I) shopping for the individual;
- (II) planning or preparing meals for the individual;
- (III) housekeeping for the individual;
- (IV) procuring or preparing the individual's medication; or
- (V) arranging transportation for the individual;

and

(C) habilitation delegated, which is tasks delegated by a registered nurse (RN) to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(56) Health-related tasks--Specific tasks related to the needs of an individual that can be delegated or assigned by a licensed health care professional under state law to be performed by a service provider of CFC PAS/HAB. These include:

- (A) tasks delegated by a registered nurse (RN);
- (B) health maintenance activities, as defined in 22 TAC §225.4 (relating to Definitions), that may not require delegation; and
- (C) activities assigned to a service provider of CFC PAS/HAB by a licensed physical therapist, occupational therapist, or speech-language pathologist.

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

(58) Hippotherapy--A specialized therapy that:

- (A) involves an individual interacting with and riding on horses;
- (B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and
- (C) is provided by two service providers at the same time, as described in §259.355(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(59) Hospital--A public or private institution that is licensed or is exempt from licensure in accordance with THSC Chapters 13, 241, 261, or 552.

(60) IADLs--Instrumental activities of daily living. Activities related to living independently in the community, including meal planning and preparation; managing finances; shopping for food, clothing, and other essential items; performing essential household chores; communicating by phone or other media; and traveling around and participating in the community.

(61) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. A facility that is licensed or is exempt from licensure in accordance with THSC Chapter 252.

(62) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(63) ID/RC Assessment--Intellectual Disability/Related Conditions Assessment. An HHSC form used to determine the level of care (LOC) for an individual.

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

(65) Individual transportation plan--A written plan developed by an individual's service planning team and documented on the HHSC individual transportation plan form. An individual transportation plan describes how transportation as a habilitation activity will be delivered to support an individual's desired goals and outcomes identified in the IPP.

(66) Inpatient chemical dependency treatment facility--A facility licensed in accordance with THSC Chapter 464, Facilities Treating Persons with a Chemical Dependency.

(67) In person or in-person--Within the physical presence of another person. In person or in-person does not include using videoconferencing or a telephone.

(68) Institution for mental diseases--Has the meaning set forth in 42 CFR §435.1010.

(69) Institutional services--Medicaid-funded services provided in a nursing facility or in an ICF/IID.

(70) Intellectual disability--Consistent with THSC §591.003, significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(71) 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 CLASS Program service and each CFC service, except for CFC support management, to be provided to the individual during an IPC year; and

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

(B) is authorized by HHSC.

(72) IPC cost--Estimated annual cost for CLASS Program services on an IPC.

(73) 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 §259.65(g) of this chapter (relating to Development of an Enrollment IPC), 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 the renewal IPC, as described in §259.77(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(74) IPP--Individual program plan. A written plan developed in accordance with §259.67 of this chapter (relating to Development of IPPs) and documented on an HHSC Individual Program Plan form.

(75) 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.

(76) Licensed vocational nurse--A person licensed to provide vocational nursing in accordance with Texas Occupations Code Chapter 301.

(77) Licensed vocational nursing--A CLASS Program service that provides vocational nursing, as defined in Texas Occupations Code §301.002.

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

(79) Managed care organization--This term has the meaning set forth in Texas Government Code §536.001.

(80) MAO Medicaid--Medical Assistance Only Medicaid. A type of Medicaid by which an individual qualifies financially for Medicaid assistance but does not receive Supplemental Security Income (SSI) benefits.

(81) Massage therapy--A specialized therapy defined in Texas Occupations Code §455.001.

(82) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(83) Medicaid HCBS--Medicaid home and community-based services. Medicaid services provided to an individual in an individual's home and community, rather than in a facility.

(84) Mental health facility--A facility licensed in accordance with THSC Chapter 577.

(85) MESAV--Medicaid Eligibility Service Authorization Verification. The automated system that contains information regarding an individual's Medicaid eligibility and service authorizations.

(86) Military family member--A person who is the spouse or child, regardless of age, of:

- (A) a military member; or
- (B) a former military member.

(87) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty who has declared and maintains Texas

as the member's state of legal residence in the manner provided by the applicable military branch.

(88) Minor home modifications--A CLASS Program service that:

(A) makes a physical adaptation to an individual's residence that:

(i) is necessary to address the individual's specific needs; and

(ii) enables the individual to function with greater independence in the individual's residence or to control his or her environment; and

(B) meets one of the following criteria:

(i) is included on the list of minor home modifications in the *Community Living Assistance and Support Services Provider Manual*; or

(ii) is the repair or maintenance of a minor home modification purchased through the CLASS Program that:

(I) is needed after one year has elapsed from the date the minor home modification is complete;

(II) is needed for a reason other than the minor home modification was intentionally damaged, as described in §259.285(c) of this chapter (relating to Repair or Replacement of Minor Home Modification); and

(III) is not covered by a warranty.

(89) Music therapy--A specialized therapy that uses musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(90) Natural supports--Unpaid persons, including family members, volunteers, neighbors, and friends, who assist and sustain an individual.

(91) 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.

(92) Nursing--One or more of the following CLASS Program services:

- (A) licensed vocational nursing;
- (B) registered nursing;
- (C) specialized licensed vocational nursing; and
- (D) specialized registered nursing.

(93) Nursing facility--A facility that is licensed or is exempt from licensure in accordance with THSC Chapter 242.

(94) Occupational therapy--A CLASS Program service that provides occupational therapy, as described in Texas Occupations Code §454.006.

(95) Own home or family home--A residence that is not:

- (A) an ICF/IID;
- (B) a nursing facility;
- (C) an ALF;
- (D) a residential child-care facility unless it is an agency foster home;

- (E) a hospital;
- (F) a mental health facility;
- (G) an inpatient chemical dependency treatment facility;
- (H) a residential facility operated by the Texas Workforce Commission;
- (I) a residential facility operated by the Texas Juvenile Justice Department;
- (J) a jail; or
- (K) a prison.

(96) PAS/HAB plan--Personal Assistance Services/Habilitation Plan. A written plan developed by an individual's service planning team and documented on the HHSC Personal Assistance Services (PAS)/Habilitation Plan form that describes the type and frequency of CFC PAS/HAB activities to be performed by a service provider.

(97) Person--A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, natural person, or any other legal entity that can function legally, sue or be sued, and make decisions through agents.

(98) Person-centered planning process--The process described in §259.57 of this chapter (relating to Person-Centered Planning Process).

(99) 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.

(100) Physical therapy--A CLASS Program service that provides physical therapy, as defined in Texas Occupations Code §453.001.

(101) Physician--Consistent with §558.2 of this title (relating to Definitions), a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of an individual, and orders home health or hospice services for the individual in accordance with Texas Occupations Code §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service, if the person is not engaged in private practice, in accordance with the Texas Occupations Code §151.052(a)(8).

(102) Platform--This term has the meaning set forth in Texas Government Code §531.001(4-d).

(103) Prevocational services--A CLASS Program service that provides services that are not job-task oriented and are provided to an individual whose service planning team does not expect to be employed, without receiving supported employment, within one year after

the date prevocational services begin. Prevocational services prepare an individual for competitive employment and consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's IPP for prevocational services;

(iii) that are essential to obtaining and retaining competitive employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain competitive employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

(104) Program provider--A person that has a contract with HHSC to provide CLASS Program services, excluding an FMSA. In the CLASS Program, there are two types of program providers, a DSA and a CMA.

(105) Public emergency personnel--Personnel of a sheriff's department, police department, emergency medical service, or fire department.

(106) Recreational therapy--A specialized therapy that provides recreational or leisure activities that assist an individual to restore, remediate, or habilitate the individual's level of functioning and independence in life activities; promote health and wellness; and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(107) Reduction--An action taken by HHSC as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by HHSC on the prior IPC.

(108) Registered nursing--A CLASS Program service that provides professional nursing, as defined in Texas Occupations Code §301.002.

(109) Related condition--As defined in 42 CFR §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) capacity for independent living.

(110) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *Community Living Assistance and Support Services Provider Manual*.

(111) Renewal IPC--An IPC developed in accordance with §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(112) Residential child-care facility--The term has the meaning set forth in Texas Human Resources Code §42.002.

(113) Respite--A CLASS Program service that provides temporary assistance and support with an individual's ADLs if the individual has the same residence as a person who routinely provides the assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support.

(A) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of transportation as a habilitation activity or CFC PAS/HAB or an employee in the CDS option of transportation as a habilitation activity or CFC PAS/HAB, HHSC does not approve respite unless:

(i) the service provider or employee routinely provides unpaid assistance and support with ADLs to the individual;

(ii) the amount of respite does not exceed the amount of unpaid assistance and support routinely provided; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(B) If the person who routinely provides assistance and support, resides with the individual, and is temporarily unavailable to provide assistance and support, is a service provider of support family services or continued family services, HHSC does not approve respite unless:

(i) for an individual receiving support family services, the individual does not receive respite on the same day the individual receives support family services;

(ii) for an individual receiving continued family services, the individual does not receive respite on the same day the individual receives continued family services; and

(iii) the service provider of respite or employee in the CDS option of respite does not have the same residence as the individual.

(C) Respite consists of the following:

(i) interacting in person with an individual who is awake to assist the individual in the following activities:

- (I) self-care;
- (II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the indi-

vidual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety, and se-

curity;

(ii) interacting in person or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities, which may not involve interacting in person with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication;

(V) arranging transportation for the individual;

or

(VI) protecting the individual's health, safety, and security while the individual is asleep.

(114) Responder--A person designated to respond to an alarm call activated by an individual.

(115) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §259.79 of this chapter to add a new CLASS Program service or CFC service or change the amount of an existing service.

(116) RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code Chapter 301.

(117) Seclusion--The involuntary placement of an individual alone in an area from which the individual is prevented from leaving.

(118) Service backup plan--A written plan developed in accordance with §259.89 of this chapter (relating to Service Backup Plans) to ensure continuity of critical program services if service delivery is interrupted.

(119) Service planning team--A team consisting of:

(A) the individual;

(B) if applicable, the individual's LAR or actively involved person;

(C) the individual's case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual, LAR, or actively involved person, including an managed care organization service coordinator, a family member, a friend, and a teacher; and

(F) a person selected by the DSA, with the approval of the individual and LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(120) Service provider--A person who is an employee or contractor of a DSA who provides a direct service.

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

(122) Sexual activity--An activity that is sexual in nature, including kissing, hugging, stroking, or fondling with sexual intent.

(123) Sexual exploitation--A pattern, practice, or scheme of conduct against an individual that can reasonably be construed as being for the purposes of sexual arousal or gratification of any person:

(A) which may include sexual contact; and

(B) does not include obtaining information about an individual's sexual history within standard accepted clinical practice.

(124) Specialized licensed vocational nursing--A CLASS Program service that provides licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(125) Specialized registered nursing--A CLASS Program service that provides registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(126) Specialized therapies--A CLASS Program service that promotes skills development, maintains skills, decreases inappropriate behaviors, facilitates emotional well-being, creates opportunities for socialization, or improves physical and medical status and consists of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding.

(127) Speech and language pathology--A CLASS Program service that provides speech-language pathology, as defined in Texas Occupations Code §401.001.

(128) Staff person--A full-time or part-time employee of a program provider.

(129) State supported living center--A state-supported and structured residential facility operated by HHSC to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of

personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(130) Store and forward technology--This term has the meaning set forth in Texas Occupations Code §111.001(2).

(131) Support consultation--A CLASS Program service that is defined in 40 TAC §41.103 and may be provided to an individual who chooses to participate in the CDS option.

(132) Support family services--A CLASS Program service that is described in §259.217 of this chapter and is provided to an individual under 18 years of age who resides with a support family, as described in §259.215 of this chapter.

(133) Supported employment--A CLASS Program service that provides assistance to sustain competitive employment to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed.

(134) Synchronous audio-visual--An interactive, two-way audio and video communication platform that:

(A) allows a service to be provided to an individual in real time; and

(B) conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(135) System check--A test of the CFC ERS equipment to determine if:

(A) the individual can successfully activate an alarm call; and

(B) the equipment is working properly.

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

(137) Target behavior--A behavior identified in a behavior support plan for reduction or elimination.

(138) TAS--Transition assistance services. A CLASS Program service provided in accordance with Chapter 272 of this title (related to Transition Assistance Services) to an individual who is receiving institutional services and is eligible for and enrolling into the CLASS Program.

(139) Telehealth services--This term has the meaning set forth in Texas Occupations Code §111.001.

(140) Texas Workforce Commission--The state agency established under Texas Labor Code Chapter 301.

(141) Therapeutic horseback riding--A specialized therapy that:

(A) involves an individual interacting with and riding on horses; and

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual.

(142) THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(143) 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.

(144) Videoconferencing--An interactive, two-way audio and video communication:

(A) used to conduct a meeting between two or more persons who are in different locations; and

(B) that conforms to the privacy requirements under the Health Insurance Portability and Accountability Act.

(145) Volunteer--A person who works for a program provider without compensation, other than reimbursement for actual expenses.

§259.7. Description of the CLASS Program and CFC Option.

(a) The CLASS Program is a Medicaid waiver program approved by CMS and operated by HHSC pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/IID Program. CLASS Program services are intended to:

(1) enhance the individual's integration into the community;

(2) maintain or improve the individual's independent functioning; and

(3) prevent the individual's admission to an institution.

(b) HHSC limits the enrollment in the CLASS Program to the number of individuals approved by CMS or by available funding from the state.

(c) The CLASS Program offers the following services approved by CMS:

(1) adaptive aids;

(2) auditory integration training/auditory enhancement training;

(3) behavioral support;

(4) case management;

(5) cognitive rehabilitation therapy;

(6) dental treatment;

(7) habilitation;

(8) licensed vocational nursing;

(9) minor home modifications;

(10) dietary services;

(11) occupational therapy;

(12) physical therapy;

(13) prevocational services;

(14) registered nursing;

(15) respite, which consists of:

(A) in-home respite; and

(B) out-of-home respite;

(16) speech and language pathology;

(17) specialized licensed vocational nursing;

(18) specialized registered nursing;

(19) specialized therapies, which consist of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) recreational therapy; and

(F) therapeutic horseback riding;

(20) support family services;

(21) continued family services;

(22) employment assistance;

(23) supported employment;

(24) TAS; and

(25) if the individual's IPC includes at least one CLASS Program service to be delivered through the CDS option:

(A) FMS; and

(B) support consultation.

(d) A DSA may only provide and bill for habilitation if the activity provided is transportation, as described in §259.5(55)(B)(i)(IX) of this subchapter (relating to Definitions).

(e) CFC is a state plan option governed by 42 CFR, Part 441, Subpart K, regarding Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) that provides the following services to individuals:

(1) CFC PAS/HAB;

(2) CFC ERS; and

(3) CFC support management for an individual receiving CFC PAS/HAB.

§259.9. Excluded Services.

The CLASS Program does not provide for the following:

(1) room and board, except for out-of-home respite described in §259.361(b)(2) of this chapter (relating to Respite and Dental Treatment);

(2) special education and related services, as defined in 20 United States Code §1401 that otherwise are available to the individual through a state or local educational agency; and

(3) vocational rehabilitation services that otherwise are available to the individual through a program funded under 29 United States Code Chapter 16, Subchapter I.

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

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SUBCHAPTER B. ELIGIBILITY,
ENROLLMENT, AND REVIEW
DIVISION 1. ELIGIBILITY AND
MAINTENANCE OF THE CLASS INTEREST
LIST

26 TAC §259.51, §259.53

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.

§259.51. Eligibility Criteria for CLASS Program Services and CFC Services.

- (a) An individual is eligible for CLASS Program services if:
- (1) the individual meets the financial eligibility criteria described in Appendix B of the CLASS Program waiver application approved by CMS and available on the HHSC website;
 - (2) the individual is determined by HHSC to meet the LOC VIII criteria described in §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria);
 - (3) the individual demonstrates a need for CFC PAS/HAB;
 - (4) the individual's IPC has an IPC cost for CLASS Program services at or below \$114,736.07;
 - (5) the individual is not enrolled in another waiver program or receiving a service that may not be received if the individual is enrolled in the CLASS Program, as identified in the Mutually Exclusive Services table in Appendix III of the Community Living Assistance and Support Services Provider Manual available on the HHSC website;
 - (6) the individual resides in the individual's own home or family home; and
 - (7) the individual requires the provision of:
 - (A) at least one CLASS Program service per month or a monthly monitoring by a case manager; and
 - (B) at least one CLASS Program service during an IPC period.
 - (b) Except as provided in subsection (c) of this section, an individual is eligible for a CFC service under this chapter if the individual:
 - (1) meets the criteria described in subsection (a) of this section;
 - (2) requires the provision of the CFC service; and

(3) is not receiving support family services or continued family services.

(c) To be eligible for a CFC service under this chapter, an individual receiving MAO Medicaid must, in addition to meeting the eligibility criteria described in subsection (b) of this section, receive a CLASS Program service at least monthly, as required by 42 CFR §441.510(d).

§259.53. CLASS Interest List.

(a) HHSC maintains an interest list that contains the names of individuals interested in receiving CLASS Program services.

(b) A person may request an individual's name be added to the CLASS interest list by:

- (1) calling HHSC's toll-free number; or
- (2) submitting a written request to HHSC.

(c) If a request is made in accordance with subsection (b) of this section for an individual who resides in Texas, HHSC adds the individual's name to the CLASS interest list using the date HHSC receives the request as the CLASS interest list date.

(d) For an individual under 22 years of age who is residing in a nursing facility located in Texas, HHSC adds the individual's name to the CLASS interest list using the date of admission to the nursing facility as the CLASS interest list date.

(e) For an individual determined diagnostically or functionally ineligible during the enrollment process for the Deaf-Blind with Multiple Disabilities (DBMD) Program, Home and Community-based Services (HCS) Program, Texas Home Living (TxHmL) Program, or Medically Dependent Children Program (MDCP):

(1) if the individual's name is not on the CLASS interest list, at the request of the individual or LAR, HHSC adds the individual's name to the CLASS interest list using the individual's interest list date for the program for which the individual was determined ineligible as the CLASS interest list date;

(2) if the individual's name is on the CLASS interest list and the individual's interest list date for the program for which the individual was determined ineligible is earlier than the individual's CLASS interest list date, at the request of the individual or LAR, HHSC changes the individual's CLASS interest list date to the individual's interest list date for the program for which the individual was determined ineligible; or

(3) if the individual's name is on the CLASS interest list and the individual's CLASS interest list date is earlier than the individual's interest list date for the program for which the individual was determined ineligible, HHSC does not change the individual's CLASS interest list date.

(f) This subsection applies to an individual who was enrolled in MDCP and, because the individual did not meet the level of care criteria for medical necessity for nursing facility care or did not meet the age requirement of being under 21 years of age, was determined ineligible for MDCP after November 30, 2019.

(1) At the request of the individual or LAR, HHSC adds the individual's name to the CLASS interest list:

(A) using the MDCP interest list date as the CLASS interest list date, if the individual's name is not on the CLASS interest list but it was previously on the CLASS interest list; or

(B) using the date HHSC receives the request as the CLASS interest list date, if the individual's name is not on the CLASS interest list and it never has been on the CLASS interest list.

(2) At the request of the individual or LAR, HHSC changes the CLASS interest list date to the MDCP interest list date if the individual's MDCP interest list date is earlier than the individual's CLASS interest list date.

(g) HHSC removes an individual's name from the CLASS interest list if:

(1) the individual or LAR requests in writing that the individual's name be removed from the CLASS interest list, unless the individual is under 22 years of age and residing in a nursing facility;

(2) the individual moves out of Texas, unless the individual is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the individual declines an offer of CLASS Program services or, as described in §259.55(d) of this subchapter (relating to Written Offer of CLASS Program Services), HHSC withdraws an offer of enrollment in the CLASS Program, unless:

(A) the individual is a military family member living outside of Texas:

(i) while the military member is on active duty; or

(ii) for less than one year after the former military member's active duty ends; or

(B) the individual is under 22 years of age and residing in a nursing facility;

(4) the individual is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(5) the individual is deceased; or

(6) HHSC has denied the individual enrollment in the CLASS Program and the individual or LAR:

(A) has had an opportunity to exercise the individual's right to appeal the decision in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing), and;

(B) either:

(i) did not appeal the decision; or

(ii) appealed and did not prevail.

(h) If HHSC removes an individual's name from the CLASS interest list in accordance with subsection (g)(1) - (4) of this section, HHSC receives an oral or written request from a person to add the individual's name to the CLASS interest list within 90 calendar days after the name was removed, and the request is the individual's first request, HHSC:

(1) adds the individual's name to the CLASS interest list using the CLASS interest list date that was in effect at the time the individual's name was removed from the CLASS interest list; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the CLASS interest list in accordance with paragraph (1) of this subsection.

(i) If HHSC removes an individual's name from the CLASS interest list in accordance with subsection (g)(1) - (4) of this section, HHSC receives an oral or written request from a person to add the individual's name to the CLASS interest list more than 90 calendar

days after the name was removed, and the request is the individual's first request, HHSC:

(1) adds the individual's name to the CLASS interest list using as the CLASS interest list date:

(A) the date HHSC receives the oral or written request;

or

(B) if HHSC determines extenuating circumstances exist, the CLASS interest list date that was in effect at the time the individual's name was removed from the CLASS interest list; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the CLASS interest list in accordance with paragraph (1) of this subsection.

(j) If HHSC removes an individual's name from the CLASS interest list in accordance with subsection (g)(1) - (4) of this section, HHSC receives an oral or written request from a person to add the individual's name to the CLASS interest list, and the request is not the individual's first request:

(1) HHSC adds the individual's name to the CLASS interest list using the date HHSC receives the oral or written request as the CLASS interest list date; and

(2) HHSC notifies the individual or LAR in writing that the individual's name has been added to the CLASS interest list in accordance with paragraph (1) of this subsection.

(k) If HHSC removes an individual's name from the CLASS interest list in accordance with subsection (g)(6) of this section and HHSC subsequently receives an oral or written request from a person to add the individual's name to the CLASS interest list, HHSC:

(1) adds the individual's name to the CLASS interest list using the date HHSC receives the oral or written request as the CLASS interest list date; and

(2) notifies the individual or LAR in writing that the individual's name has been added to the CLASS interest list in accordance with paragraph (1) of this subsection.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5077



**DIVISION 2. ENROLLMENT PROCESS,
PERSON-CENTERED SERVICE PLANNING,
AND REQUIREMENTS FOR SERVICE
SETTINGS**

**26 TAC §§259.55, 259.57, 259.59, 259.61, 259.63, 259.65,
259.67, 259.69, 259.71, 259.73**

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.

§259.55. Written Offer of CLASS Program Services.

(a) HHSC sends a written offer in accordance with this subsection.

(1) HHSC sends a written offer of enrollment in the CLASS Program to:

(A) the individual whose CLASS interest list date, assigned in accordance with §259.53 of this subchapter (relating to CLASS Interest List), is earliest on the CLASS interest list; or

(B) an individual who is residing in a nursing facility and requesting CLASS Program services.

(2) HHSC encloses with the written offer:

(A) an HHSC Selection Determination form which includes a list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) an HHSC CLASS Applicant Acknowledgement form.

(b) An individual or LAR accepts the offer of enrollment in the CLASS Program by:

(1) documenting the selection of one CMA and one DSA on the HHSC Selection Determination form; and

(2) ensuring the completed HHSC Selection Determination form and HHSC CLASS Applicant Acknowledgement form are submitted to HHSC and postmarked or faxed no later than 60 calendar days after the date of the written offer.

(c) If HHSC receives the completed HHSC Selection Determination form and HHSC CLASS Applicant Acknowledgement form, as described in subsection (b)(2) of this section, HHSC uses the HHSC Selection Determination form to notify the CMA and DSA of the individual's or LAR's selection of a CMA and a DSA.

(d) HHSC withdraws an offer of enrollment in the CLASS Program made to an individual if:

(1) the completed HHSC Selection Determination form and HHSC CLASS Applicant Acknowledgement form are postmarked or faxed more than 60 calendar days after the date of the written offer;

(2) the individual or LAR does not complete the enrollment process as described in §259.61 of this division (relating to Process for Enrollment of an Individual);

(3) the individual was offered enrollment in the CLASS Program because the individual was residing in a nursing facility but was discharged from the nursing facility before the effective date of the enrollment IPC; or

(4) the individual has moved out of the state of Texas.

§259.57. Person-Centered Planning Process.

(a) Person-centered planning is a process that empowers an individual to plan the individual's services and supports to achieve desired outcomes.

(b) A program provider must ensure the person-centered planning process is led by an individual to the maximum extent possible. An individual's LAR has a participatory role, as needed and as defined by the individual, unless State law confers decision-making authority to the LAR.

(c) The person-centered planning process must be used to develop an IPP, an HHSC IPP Addendum, a PAS/HAB plan, an enrollment IPC, a renewal IPC, a revised IPC, a service backup plan, and an individual transportation plan.

(d) The person-centered planning process must:

(1) include people chosen by an individual or LAR;

(2) provide the information and support that the individual needs to lead the planning process and make informed choices and decisions;

(3) occur at a time and location convenient to the individual and LAR;

(4) consider the individual's cultural preferences;

(5) provide information in plain language to the individual and in a manner that is accessible to the individual:

(A) through the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act, if the individual requires such aids or services to communicate; and

(B) through the provision of language services at no cost to the individual, including oral interpretation and written translations, if the individual has limited English proficiency;

(6) use strategies for solving conflict or disagreement within the person-centered planning process;

(7) provide information to the individual or LAR to allow the individual or LAR to make informed decisions, including decisions about CLASS Program and CFC services, the settings in which the individual receives a CLASS Program service or a CFC service, and service providers; and

(8) inform the individual or LAR that the individual or LAR may request revisions to an IPP, a PAS/HAB plan, an enrollment IPC, a renewal IPC, a revised IPC, a service backup plan, or an individual transportation plan at any time by communicating the request to the CMA or DSA.

§259.59. Requirements for Service Settings.

(a) A program provider must ensure that a setting in which an individual receives a CLASS Program service or a CFC service:

(1) is based on the needs of the individual as documented in the individual's person-centered service plan;

(2) is integrated in and supports the individual's access to the greater community to the same degree as a person not enrolled in a Medicaid waiver program, including opportunities for the individual:

(A) to seek employment and work in a competitive integrated setting;

(B) engage in community life; and

(C) control personal resources;

(3) ensures the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint; and

(4) optimizes the individual's initiative, autonomy, and independence in making life choices, including choices regarding daily activities, physical environment, and with whom to interact.

(b) Except as provided in subsection (c) of this section, a program provider must ensure that CLASS Program services and CFC services are not provided in a setting that is presumed to have the qualities of an institution. A setting is presumed to have the qualities of an institution if the setting:

(1) is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;

(2) is located in a building on the grounds of, or immediately adjacent to, a public institution; or

(3) has the effect of isolating individuals from the broader community of persons not receiving Medicaid HCBS.

(c) A program provider may provide a CLASS Program service or a CFC service to an individual in a setting that is presumed to have the qualities of an institution as described in subsection (b) of this section, if CMS determines through a heightened scrutiny review that the setting:

(1) does not have the qualities of an institution; and

(2) does have the qualities of home and community-based settings.

§259.61. Process for Enrollment of an Individual.

(a) After HHSC notifies a CMA, as described in §259.55(c) of this division (relating to Written Offer of CLASS Program Services), that an individual selected the CMA, the CMA must assign a case manager to perform the following functions as soon as possible, but no later than 14 calendar days after HHSC's notification:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a contract;

(2) conduct an initial in-person visit in the individual's residence with the individual and LAR or actively involved person at a time convenient to the individual and LAR to:

(A) provide an oral and written explanation of the following to the individual and LAR or actively involved person:

(i) CLASS Program services, including TAS if the individual is receiving institutional services;

(ii) CFC services;

(iii) the mandatory participation requirements of an individual described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(iv) the CDS option described in §259.71 of this division (relating to CDS Option);

(v) the right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing);

(vi) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to DFPS by calling the toll-free telephone number at 1-800-252-5400;

(vii) the process by which the individual, LAR, or actively involved person may file a complaint regarding case management as required by 40 TAC §49.309 (relating to Complaint Process);

(viii) that the HHSC Office of the Ombudsman toll-free telephone number at 1-877-787-8999 may be used to file a complaint regarding the CMA;

(ix) voter registration, if the individual is 18 years of age or older;

(x) that, while the individual is staying at a location outside the catchment area in which the individual resides but within the state of Texas for a period of no more than 60 consecutive days, the individual and LAR or actively involved person may request that the DSA provide:

(I) transportation as a habilitation activity, as described in §259.5(55)(B)(i)(IX) of this subchapter (relating to Definitions);

(II) out-of-home respite in a camp described in §259.361(b)(2)(D) of this chapter (relating to Respite and Dental Treatment);

(III) adaptive aids;

(IV) nursing; and

(V) CFC PAS/HAB;

(xi) the use of electronic visit verification, as required by 1 TAC Chapter 354, Subchapter O; and

(xii) how to contact the individual's case manager; and

(B) use the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of:

(i) the eligibility requirements for:

(I) CLASS Program services, as described in §259.51(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(II) CFC services for individuals who do not receive MAO Medicaid, as described in §259.51(b) of this subchapter; and

(III) CFC services for individuals who receive MAO Medicaid, as described in §259.51(c) of this subchapter;

(ii) the reasons CLASS Program services and CFC services may be suspended, as described in §259.157 of this chapter (relating to Suspension of CLASS Program Services or CFC Services); and

(iii) that CLASS Program services and CFC services may be terminated as described in §§259.161, 259.163, 259.165, and 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy); and

(C) educate the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(3) give the individual or LAR the HHSC Waiver Program Verification of Freedom of Choice form to document the individual's or LAR's choice regarding the CLASS Program or the ICF/IID Program.

(b) A CMA must:

(1) as soon as possible, but no later than two business days after the case manager's initial in-person visit required by subsection (a)(2) of this section:

(A) collect the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the *Community Living Assistance and Support Services Provider Manual*; and

(B) provide the individual's selected DSA with the information collected in accordance with subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility, as required by §259.103(1) of this chapter; and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrolling into the CLASS Program.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days after the case manager's initial in-person visit, as required by §259.103(1) of this chapter, but is making good faith efforts to complete the application, the CMA:

(1) may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (2) of this subsection;

(2) must not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial in-person visit; and

(3) must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days after the case manager's initial in-person visit, as required by §259.103(1) of this chapter, and is not making good faith efforts to complete the application, a CMA must request, in writing, that HHSC withdraw the offer of enrollment made to the individual in accordance with §259.55(d)(2) of this division.

(e) If a DSA serving the catchment area in which an individual resides is not willing to provide CLASS Program services or CFC services to the individual because the DSA has determined that it cannot ensure the individual's health and safety, the CMA must provide to HHSC, in writing, the specific reasons the DSA has determined that it cannot ensure the individual's health and safety.

(f) During the initial in-person visit described in subsection (a)(1) of the section, the case manager must determine whether an individual meets the following criteria:

(1) the individual is being discharged from a nursing facility or an ICF/IID;

(2) the individual has not previously received TAS;

(3) the individual's proposed enrollment IPC will not include support family services; and

(4) the individual anticipates needing TAS.

(g) If a case manager determines that an individual meets the criteria described in subsection (f) of this section, the case manager must:

(1) provide the individual or LAR with a list of TAS providers in the catchment area in which the individual will reside;

(2) complete, with the individual or LAR, the HHSC Transition Assistance Services (TAS) Assessment and Authorization form found on the HHSC website in accordance with the form's instructions, which includes:

(A) identifying the items and services described in §272.5(e) of this title (relating to Service Description) that the individual needs;

(B) estimating the monetary amount for the items and services identified on the form, which must be within the service limit described in §259.73(a)(4) of this division (relating to Service Limits); and

(C) documenting the individual's or LAR's choice of TAS provider;

(3) submit the completed form to HHSC for authorization;

(4) if HHSC authorizes the form, send the form to the TAS provider chosen by the individual or LAR; and

(5) include TAS and the monetary amount authorized by HHSC on the individual's proposed enrollment IPC.

(h) A DSA must ensure that the following functions are performed during an in-person visit in the individual's residence at a time convenient to the individual and LAR as soon as possible, but no later than 14 calendar days after the CMA provides information to the DSA as required by subsection (b)(1)(B) of this section:

(1) a DSA staff person must:

(A) inform the individual and LAR or actively involved person, orally and in writing:

(i) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to DFPS by calling the toll-free telephone number at 1-800-252-5400;

(ii) the process by which the individual, LAR, or actively involved person may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by 40 TAC §49.309; and

(iii) that the HHSC Complaint and Incident Intake toll-free telephone number at 1-800-458-9858 may be used to file a complaint regarding the DSA; and

(B) educate the individual and LAR or actively involved person about protecting the individual from abuse, neglect, and exploitation;

(2) an appropriate professional must complete an adaptive behavior screening assessment in accordance with the assessment instructions; and

(3) an RN, in accordance with the *Community Living Assistance and Support Services Provider Manual*, must complete:

(A) a nursing assessment, using the HHSC CLASS/DBMD Nursing Assessment form;

(B) the HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the ID/RC Assessment.

(i) A DSA must:

(1) ensure that the primary diagnosis of the individual documented on the ID/RC Assessment is approved by a physician;

(2) submit the following documentation to HHSC for HHSC's determination of whether the individual meets the LOC VIII criteria required by §259.51(a)(2) of this subchapter:

(A) the completed adaptive behavior screening assessment;

(B) the completed HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the completed ID/RC Assessment; and

(3) send the completed HHSC CLASS/DBMD Nursing Assessment form described in subsection (h)(3)(A) of this section to the CMA.

(j) In accordance with §259.63(a)(1) of this division (relating to Determination by HHSC of Whether an Individual Meets LOC VIII Criteria), HHSC reviews the documentation described in subsection (i)(2) of this section.

(k) If a DSA receives written notice from HHSC in accordance with §259.63(c)(1) of this division that an individual meets the LOC VIII criteria, the DSA must notify the individual's CMA of HHSC's decision as soon as possible, but no later than one business day after receiving the notice from HHSC.

(l) If HHSC determines that an individual does not meet the LOC VIII criteria, HHSC sends written notice of the denial of the individual's request for enrollment into the CLASS Program:

(1) to the individual or LAR in accordance with §259.153(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program); and

(2) to the individual's DSA and CMA in accordance with §259.63(d) of this division.

(m) If a CMA receives notice from a DSA, as described in subsection (k) of this section, that HHSC determined that an individual meets the LOC VIII criteria, the case manager must:

(1) ensure that the service planning team meets in person or by videoconferencing to develop:

(A) a proposed enrollment IPC, a PAS/HAB plan, IPPs, and an HHSC IPP Addendum form for the individual in accordance with §259.65 of this division (relating to Development of an Enrollment IPC); and

(B) an individual transportation plan, if transportation as a habilitation activity or as an adaptive aid is included on the proposed enrollment IPC; and

(2) submit the documents described in paragraph (1) of this subsection to HHSC for review in accordance with §259.65 of this division.

(n) HHSC reviews a proposed enrollment IPC in accordance with §259.69 of this division (relating to HHSC's Review of a Proposed Enrollment IPC) to determine if:

(1) the proposed enrollment IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter; and

(2) the CLASS Program services and CFC services specified in the proposed enrollment IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this division.

(o) A CMA and DSA must not provide a CLASS Program service or CFC service to an individual before HHSC notifies the CMA, in accordance with §259.69(c)(1) of this division, that the individual's request for enrollment into the CLASS Program has been approved. If

a CMA or DSA provides CLASS Program services or CFC services to an individual before the effective date of the individual's enrollment IPC authorized by HHSC, HHSC does not reimburse the CMA or DSA for those services.

(p) If HHSC notifies a CMA in accordance with §259.69(c)(1) of this division that an individual's request for enrollment is approved:

(1) the CMA must ensure the case manager complies with §259.69(c)(2) of this division; and

(2) the CMA and DSA must comply with §259.69(g) of this division.

(q) If HHSC notifies a CMA in accordance with §259.69(e) of this division that an individual's request for enrollment into the CLASS Program is approved, but action is being taken by HHSC to deny a CLASS Program service or CFC service and modify the proposed enrollment IPC:

(1) the CMA must comply with §259.69(f) of this division; and

(2) the CMA and DSA must comply with §259.69(g) of this division.

§259.63. Determination by HHSC of Whether an Individual Meets LOC VIII Criteria.

(a) To determine if an individual meets the LOC VIII criteria required by §259.51(a)(2) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services), HHSC reviews the documentation submitted by an individual's DSA:

(1) described in §259.61(i)(2) of this division (relating to Process for Enrollment of an Individual); or

(2) described in §259.75(a)(2) of this subchapter (related to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria).

(b) HHSC may request current data obtained from standardized evaluations and formal assessments related to the LOC VIII criteria. If HHSC makes such a request, a DSA must submit the information to HHSC no later than 10 calendar days after the date of the request.

(c) If HHSC determines that an individual meets the LOC VIII criteria:

(1) HHSC notifies the individual's DSA of the determination, in writing; and

(2) the LOC VIII is effective:

(A) on a date determined by HHSC; and

(B) through the last calendar day of the IPC period.

(d) If HHSC determines that an individual does not meet the LOC VIII criteria, HHSC notifies an individual's DSA and CMA of the determination, in writing.

§259.65. Development of an Enrollment IPC.

(a) No later than 30 calendar days after the date a DSA notifies an individual's CMA of HHSC's determination that the individual meets the LOC VIII criteria, as described in §259.61(k) of this division (relating to Process for Enrollment of an Individual), the CMA must ensure that the individual's case manager:

(1) convenes a service planning team meeting in person or by videoconferencing in which the service planning team:

(A) reviews the HHSC CLASS/DBMD Nursing Assessment form completed by an RN as described in §259.61(h)(3) of this division;

(B) addresses any information included in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form, Recommendations/Coordination of Care, to ensure the individual's needs are met;

(C) documents on the HHSC CLASS/DBMD Coordination of Care form how the information in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form was addressed;

(D) develops a PAS/HAB plan based on review of the information obtained from assessments conducted and observations made by a DSA as required by §259.61(h)(2) and (3) of this division;

(E) develops a proposed enrollment IPC that:

(i) documents each CLASS Program service and CFC service, other than CFC support management, to be provided to an individual;

(ii) specifies the number of units of each CLASS Program service and CFC service, other than CFC support management, to be provided to an individual;

(iii) for each CLASS Program service:

(I) is within the service limit described in §259.73 of this division (relating to Service Limits);

(II) if an adaptive aid, meets the requirements in Subchapter F, Division 1, of this chapter (relating to Adaptive Aids); and

(III) if a minor home modification, meets the requirements in Subchapter F, Division 2, of this chapter (relating to Minor Home Modifications);

(iv) for CFC ERS, meets the requirements in Subchapter F, Division 3, of this chapter (relating to CFC ERS);

(v) identifies if an individual will receive CFC support management;

(vi) describes any other service or support to be provided to the individual through sources other than CLASS Program services or CFC services;

(vii) if the proposed enrollment IPC includes nursing or CFC PAS/HAB, identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter (relating to Service Backup Plans);

(viii) if the individual will receive TAS, the TAS and the monetary amount authorized by HHSC; and

(ix) if the individual chooses to receive services through the CDS option, identifies:

(I) the name of the individual's FMSA; and

(II) the type and estimated units of each CLASS Program service and CFC service provided through the CDS option;

(F) develops an IPP for each CLASS Program service and CFC service listed on the proposed enrollment IPC, other than CFC support management, as required by §259.67 of this division (relating to Development of IPPs);

(G) develops an HHSC IPP Addendum form;

(H) if the proposed enrollment IPC identifies nursing or CFC PAS/HAB as critical, develops a service backup plan for the service in accordance with §259.89 of this subchapter; and

(I) if transportation as a habilitation activity or as an adaptive aid is included on the proposed enrollment IPC, develops an individual transportation plan; and

(2) if an individual may need cognitive rehabilitation therapy, assists the individual in obtaining an assessment as required by §259.311(h) of this chapter (relating to CMA Service Delivery).

(b) A case manager must ensure that each CLASS Program service and CFC service on a proposed enrollment IPC, other than CFC support management:

(1) is necessary to protect an individual's health and welfare in the community;

(2) addresses an individual's related condition;

(3) is not available to an individual through sources other than CLASS Program services or CFC services, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) is the most appropriate type and amount of CLASS Program service and CFC service to meet an individual's needs; and

(5) is cost effective.

(c) If an individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, a case manager must:

(1) if the service planning team meeting required by subsection (a)(1) of this section is conducted in person, ensure that during the service planning team meeting the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; or

(2) if the service planning team meeting required by subsection (a)(1) of this section is conducted by videoconferencing, ensure that the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by the individual or LAR and the DSA electronically, by fax, or by United States mail; and

(3) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit to HHSC for its review:

(i) the proposed enrollment IPC;

(ii) the enrollment IPPs;

(iii) the HHSC IPP Addendum form;

(iv) the PAS/HAB plan;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §259.61(i)(3) of this division;

(vi) the ID/RC Assessment authorized by HHSC;

(vii) the HHSC Non-Waiver Services form;

(viii) the HHSC Verification of Freedom of Choice

form;

(ix) Choice List for the CLASS Program;

(x) the individual transportation plan, if required by subsection (a)(1)(I) of this section;

(xi) an HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by;

(I) §259.255 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than \$500);

(II) §259.257 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More);

(III) §259.275 of this chapter (relating to Requirements for Authorization to Purchase a Minor Home Modification); and

(IV) §259.361 of this chapter (relating to Respite and Dental Treatment);

(xii) an HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xiii) letters of denial from non-waiver resources, if any;

(xiv) if the proposed enrollment IPC includes TAS, the HHSC Transition Assistance Services Assessment and Authorization form; and

(xv) if the proposed enrollment IPC includes a skilled or a specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the proposed enrollment IPC;

(ii) the enrollment IPPs;

(iii) the HHSC IPP Addendum form;

(iv) the PAS/HAB plan;

(v) a service backup plan, if required by subsection (a)(1)(H) of this section; and

(vi) the individual transportation plan, if required by subsection (a)(1)(I) of this section; and

(C) if the proposed enrollment IPC includes a service the individual chooses to receive through the CDS option, send the FMSA a copy of:

(i) the proposed enrollment IPC;

(ii) the IPPs;

(iii) the HHSC IPP Addendum form;

(iv) the PAS/HAB plan;

(v) a service backup plan, if is required by subsection (a)(1)(H) of this section; and

(vi) the individual transportation plan, if required by subsection (a)(1)(I) of this section.

(d) If an individual or LAR requests a CLASS Program service or CFC service that a case manager or DSA has determined does not meet the criteria described in subsection (b) of this section, does not meet the requirements described in Subchapter F of this chapter, or exceeds a service limit described in §259.73 of this division, a CMA must:

(1) in accordance with the *Community Living Assistance and Support Services Provider Manual*, send the individual or LAR a

written notice of the denial of the requested CLASS Program service or CFC service, copying the DSA and FMSA;

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team, submit to HHSC for its review:

(A) the proposed enrollment IPC that:

(i) includes the type and amount of CLASS Program services or CFC services in dispute and not in dispute; and

(ii) is signed and dated by:

(I) the individual or LAR;

(II) the case manager; and

(III) the DSA;

(B) the IPPs;

(C) the HHSC IPP Addendum form;

(D) the PAS/HAB plan; and

(E) the individual transportation plan, if required by subsection (a)(1)(I) of this section; and

(3) if the individual will receive a service through the CDS option, send the FMSA a copy of:

(A) the proposed enrollment IPC;

(B) the IPPs;

(C) the PAS/HAB plan;

(D) a service backup plan, if required by subsection (a)(1)(H) of this section; and

(E) the individual transportation plan, if required by subsection (a)(1)(I) of this section.

(c) HHSC reviews a proposed enrollment IPC in accordance with §259.69 of this division (relating to HHSC's Review of a Proposed Enrollment IPC).

(f) The process by which HHSC denies an individual's request for enrollment or denies a CLASS Program service or CFC service, based on HHSC's review of a proposed enrollment IPC, is described in §259.69(d) - (f) of this division.

(g) The effective date of an enrollment IPC is the effective date proposed by the service planning team, unless HHSC modifies the effective date.

(h) An enrollment IPC is effective for an IPC period.

§259.67. Development of IPPs.

(a) A case manager must ensure that an individual's service planning team:

(1) develops an enrollment IPP for each CLASS Program service and CFC service listed on a proposed enrollment IPC, other than CFC support management, and submits the enrollment IPPs to HHSC in accordance with §259.65 of this division (relating to Development of an Enrollment IPC); and

(2) develops a renewal or revised IPP for each CLASS Program service and CFC service, other than CFC support management, and submits the renewal or revised IPPs to HHSC in accordance with §259.79 of this subchapter (relating to Renewal and Revision of an IPC).

(b) A case manager must ensure that an enrollment, renewal, or revised IPP:

(1) includes justification for the service;

(2) includes the total units of the service;

(3) describes:

(A) the outcomes to be achieved through the service;

and

(B) the actions and methods to be used to achieve the

outcomes;

(4) describes individualized goals for the service that:

(A) are outcome-based;

(B) are measurable; and

(C) have a start date and projected completion date;

(5) describes the individual's current natural supports and non-waiver and non-CFC services that will be or are available;

(6) documents that the frequency and amount of the service does not replace existing natural supports, non-waiver resources, or non-CFC resources for which the individual may be eligible; and

(7) documents the setting for each service, which must be selected by the individual or LAR from setting options.

(c) A case manager must ensure that an enrollment, renewal, or revised IPP is reviewed, signed, and dated as evidence of agreement by:

(1) the individual or LAR;

(2) the case manager; and

(3) the DSA.

§259.69. HHSC's Review of a Proposed Enrollment IPC.

(a) HHSC reviews a proposed enrollment IPC, a PAS/HAB plan, enrollment IPPs, an HHSC IPP Addendum form and, if required by §259.65(a)(1)(I) of this division (relating to Development of an Enrollment IPC), the individual transportation plan to determine if:

(1) the proposed enrollment IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(2) the CLASS Program services and CFC services specified in the IPC meet the requirements described in §259.65(a)(1)(E)(iii) and (iv) and §259.65(b) of this division.

(b) At HHSC's request, a CMA must submit additional documentation supporting a proposed enrollment IPC to HHSC no later than 10 calendar days after HHSC's request.

(c) If HHSC determines that a proposed enrollment IPC meets the requirements described in subsection (a) of this section:

(1) HHSC notifies the CMA, in writing, that the individual's request for enrollment is approved; and

(2) as soon as possible, but no later than one business day after the CMA receives HHSC's notification, the case manager must:

(A) notify the individual or LAR of HHSC's approval of the request for enrollment;

(B) send a copy to the individual or LAR and to the DSA of:

(i) the enrollment IPC;

(ii) the PAS/HAB Plan;

(iii) the enrollment IPPs;

(iv) the HHSC IPP Addendum form;

(v) a service backup plan, if required by §259.65(a)(1)(H) of this division; and

(vi) the individual transportation plan, if required by §259.65(a)(1)(I) of this division; and

(C) if the individual will receive a service through the CDS option, send the FMSA a copy of the:

(i) enrollment IPC;

(ii) the PAS/HAB plan;

(iii) the enrollment IPPs;

(iv) the HHSC IPP Addendum form;

(v) a service backup plan, if required by §259.65(a)(1)(H) of this division; and

(vi) the individual transportation plan, if required by §259.65(a)(1)(I) of this division.

(d) If HHSC determines that a proposed enrollment IPC does not meet the requirements described in subsection (a)(1) of this section, HHSC:

(1) notifies the individual's CMA and DSA of such determination;

(2) sends written notice to the individual or LAR that the individual's request for enrollment is denied; and

(3) includes in the notice the individual's right to request a fair hearing in accordance with §259.101 of this subchapter (relating to Individual's Right to a Fair Hearing).

(e) If HHSC determines that a proposed enrollment IPC meets the requirement described in subsection (a)(1) of this section, but one or more of the CLASS Program services or CFC services specified in the IPC does not meet the requirements described in subsection (a)(2) of this section, HHSC:

(1) denies a CLASS Program service or CFC service;

(2) modifies and approves the proposed enrollment IPC;

(3) approves the individual's request for enrollment with the modified IPC; and

(4) notifies the individual's CMA, in writing, of the action taken.

(f) If HHSC notifies a CMA that an individual's request for enrollment into the CLASS Program is approved, but action is being taken by HHSC to deny a CLASS Program service or CFC service and modify the proposed enrollment IPC, as described in subsection (e) of this section, the CMA must comply with §259.155(c) of this chapter (relating to Denial of a CLASS Program Service or CFC Service).

(g) If HHSC approves an individual's request for enrollment, a CMA and DSA must:

(1) electronically access MESAV to determine if the information on an enrollment IPC or modified enrollment IPC is consistent with the information in MESAV;

(2) if the information on the enrollment IPC or modified enrollment IPC is inconsistent with the information in MESAV, notify HHSC of the inconsistency; and

(3) implement the enrollment IPC or modified enrollment IPC no later than seven calendar days after the effective date of the IPC.

§259.71. CDS Option.

(a) During the initial in-person visit with an individual and LAR or actively involved person, as described in §259.61(a)(2) of this division (related to Process for Enrollment of an Individual), and annually thereafter, the CMA must ensure that the individual's case manager informs the individual and LAR or actively involved person of:

(1) the CDS option in accordance with 40 TAC Chapter 41, Subchapter D (relating to Enrollment, Transfer, Suspension, and Termination); and

(2) the CLASS Program services and CFC service provided through the CDS option, described in 40 TAC §41.108 (relating to Services Available Through the CDS Option).

(b) If an individual or LAR chooses to participate in the CDS option, the case manager must:

(1) use the list of FMSAs found on the HHSC website to provide the name and contact information to the individual or LAR of each FMSA providing services in the catchment area in which the individual lives;

(2) document the individual's or LAR's choice of FMSA in accordance with HHSC's instructions;

(3) document each service to be provided through the CDS option on the IPC;

(4) if the only service to be provided through the CDS option is CFC PAS/HAB, include on the IPC:

(A) CFC FMS instead of FMS; and

(B) if the individual will receive support consultation, CFC support consultation instead of support consultation; and

(5) ensure the individual or LAR completes the required forms as described in 40 TAC Chapter 41, Subchapter D.

§259.73. Service Limits.

(a) The following limits apply to an individual's services:

(1) for adaptive aids and dental treatment, a maximum combined cost of \$10,000 during an IPC period, which includes the cost of repair and maintenance of an adaptive aid;

(2) for minor home modifications:

(A) a maximum cost of \$10,000 during the time an individual is enrolled in the CLASS Program, which may be paid in one or more IPC periods; and

(B) after reaching the \$10,000 limit described in subparagraph (A) of this paragraph, a maximum cost of \$300 for repair and maintenance during an IPC period;

(3) for respite, a maximum of 30 days of in-home respite and out-of-home respite, combined, during an IPC period; and

(4) for TAS, a maximum cost of \$2,500.

(b) An individual may receive TAS only once in the individual's lifetime.

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

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DIVISION 3. REVIEWS

26 TAC §§259.75, 259.77, 259.79, 259.81, 259.83, 259.85, 259.87

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.

§259.75. Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria.

(a) A DSA must:

(1) ensure that, no more than 120 calendar days before the expiration of an individual's IPC period, an RN must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(A) complete with the individual and LAR or actively involved person:

(i) the HHSC Related Conditions Eligibility Screening Instrument form; and

(ii) the ID/RC Assessment; and

(B) meet in person with the individual and LAR or actively involved person at a time and place convenient to the individual to complete a nursing assessment of the individual using the HHSC CLASS/DBMD Nursing Assessment form;

(2) submit to HHSC at least 60 calendar days before the expiration of an individual's IPC period:

(A) the results of the most current adaptive behavior screening assessment;

(B) the completed HHSC Related Conditions Eligibility Screening Instrument form; and

(C) the completed ID/RC Assessment; and

(3) send the completed HHSC CLASS/DBMD Nursing Assessment form to the CMA.

(b) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments of the individual.

(c) HHSC reviews the documentation submitted by a DSA in accordance with subsection (a)(2) of this section to determine whether an individual meets the LOC VIII criteria required by §259.51(a)(2) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services). HHSC notifies the DSA of its determination in accordance with §259.63 of this subchapter (relating to Determination by HHSC of Whether an Individual Meets LOC VIII Criteria).

(d) A DSA must ensure an appropriate professional completes an adaptive behavior screening assessment in accordance with the assessment instructions:

(1) at least every five years after completion of the most current assessment; and

(2) if significant changes that may be permanent occur in the individual's functioning.

(e) If an individual's LOC VIII expires before HHSC determines whether the individual meets the LOC VIII criteria, as described in subsection (c) of this section:

(1) the CMA and the DSA must continue to provide services to the individual until HHSC authorizes the proposed renewal IPC to ensure continuity of care and prevent the individual's health and welfare from being jeopardized; and

(2) if HHSC determines that the individual meets the LOC VIII criteria, and the individual is otherwise eligible for the CLASS Program, HHSC will reimburse the CMA and DSA for services provided, as required by paragraph (1) of this subsection, for a period of not more than 180 calendar days before the date HHSC receives the documentation described in subsection (a)(2) of this section.

§259.77. *Renewal IPC and Requirement for Authorization to Continue Services.*

(a) A renewal IPC is effective for an IPC period.

(b) The effective date of a renewal IPC is:

(1) for renewal of an enrollment IPC, the first calendar day of the same month of the enrollment IPC's effective date in the following year; or

(2) for any other renewal IPC, the first calendar day of the month after the month in which the IPC period expires.

(c) A case manager must submit a proposed renewal IPC and obtain authorization from HHSC for the proposed renewal IPC in accordance with §259.79 of this division (relating to Renewal and Revision of an IPC) to continue providing services to an individual after the expiration of:

(1) the IPC period of the individual's enrollment IPC; or

(2) the IPC period of the individual's renewal IPC.

§259.79. *Renewal and Revision of an IPC.*

(a) Beginning the effective date of an individual's IPC, as determined by §259.65(g) of this subchapter (relating to Development of an Enrollment IPC) or §259.77(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(1) meet with the individual and LAR in person to conduct an IPP service review meeting at a time and place convenient to the individual and LAR; and

(2) at least once during an IPC period, conduct an IPP service review meeting in person with the individual and LAR in the individual's residence.

(b) During an IPP service review meeting described in subsection (a) of this section, a case manager must:

(1) review the individual's progress toward achieving the goals and outcomes as described on the IPP for each service listed on the individual's IPC;

(2) if the individual's IPC includes nursing or CFC PAS/HAB, and any of those services are not identified on the IPC as critical to meeting the individual's health and safety, discuss with the individual or LAR whether the service may now be critical to the individual's health and safety;

(3) if a service backup plan has been implemented, discuss the implementation of the service backup plan with the individual or LAR to determine whether or not the plan was effective;

(4) if the case manager determines that a service may now be critical to the individual's health and safety, as described in paragraph (2) of this subsection, or that the service backup plan was ineffective, as described in paragraph (3) of this subsection, document the determination for discussion at a service planning team meeting convened in accordance with subsection (c) or (d) of this section;

(5) complete the HHSC IPP Service Review form in accordance with the *Community Living Assistance and Support Services Provider Manual*; and

(6) ensure the individual or LAR signs and dates the HHSC IPP Service Review form.

(c) No more than 90 calendar days before the end of an individual's current IPC period, the case manager must convene a service planning team meeting in person or by videoconferencing in which:

(1) the service planning team:

(A) reviews the HHSC CLASS/DBMD Nursing Assessment form completed by an RN as described in §259.75(a)(1)(B) of this division (relating to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria);

(B) addresses any information included in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form, Recommendations/Coordination of Care, to ensure the individual's needs are met;

(C) documents on the HHSC CLASS/DBMD Coordination of Care form how the information in Addendum E of the HHSC CLASS/DBMD Nursing Assessment form was addressed;

(D) develops a proposed renewal IPC that:

(i) documents each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(ii) specifies the number of units of each CLASS Program service and CFC service, other than CFC support management, to be provided to the individual;

(iii) for each CLASS Program service:

(I) is within the service limit described in §259.73 of this subchapter (relating to Service Limits);

(II) if an adaptive aid, meets the requirements in Subchapter F, Division 1, of this chapter (relating to Adaptive Aids); and

(III) if a minor home modification, meets the requirements in Subchapter F, Division 2, of this chapter (relating to Minor Home Modifications);

(iv) for CFC ERS, meets the requirements in Subchapter F, Division 3, of this chapter (relating to CFC ERS);

(v) states if the individual will receive CFC support management;

(vi) describes any other service or support to be provided to the individual through sources other than CLASS Program services or CFC services;

(vii) if the proposed renewal IPC includes nursing or CFC PAS/HAB, identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter (relating to Service Backup Plans);

(viii) if the individual chooses to receive services through the CDS option, identifies:

(I) the name of the individual's FMSA; and

(II) the type and estimated units of each CLASS Program service and CFC service provided through the CDS option;

(E) develops a renewal IPP for each CLASS Program service and CFC service listed on the proposed renewal IPC, other than CFC support management, as required by §259.67 of this subchapter (relating to Development of IPPs);

(F) develops a new HHSC IPP Addendum form;

(G) develops a new PAS/HAB plan based on review of the information obtained from assessments conducted and observations made by a DSA as required by §259.61(h)(2) and (3) of this subchapter;

(H) if the proposed renewal IPC identifies nursing or CFC PAS/HAB as critical, develops or revises a service backup plan for the service in accordance with §259.89 of this subchapter; and

(I) if transportation as a habilitation activity or as an adaptive aid is included on the proposed renewal IPC, develops a new individual transportation plan;

(2) the case manager:

(A) provides an oral and written explanation of the following to an individual and LAR or actively involved person:

(i) CLASS Program services;

(ii) CFC services;

(iii) the mandatory participation requirements described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(iv) the CDS option described in §259.71 of this subchapter (relating to CDS Option);

(v) the right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing);

(vi) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to DFPS by calling the toll-free telephone number at 1-800-252-5400;

(vii) the process by which the individual, LAR, or actively involved person may file a complaint regarding case management as described in 40 TAC §49.309 (relating to Complaint Process);

(viii) that the HHSC Office of the Ombudsman toll-free telephone number at 1-877-787-8999 may be used to file a complaint regarding the CMA;

(ix) voter registration, if the individual is 18 years of age or older; and

(x) how to contact the individual's case manager;

(B) provides an oral explanation to the individual and to the LAR or actively involved person that the individual, LAR, actively involved person may request:

(i) that the individual transfer to a different CMA, DSA, or FMSA at any time while enrolled in the CLASS Program;

(ii) that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp described in §259.361(b)(2)(D) of this chapter (relating to Respite and Dental Treatment), adaptive aids, nursing, or CFC PAS/HAB while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas for a period of no more than 60 consecutive days; and

(iii) that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB as described in clause (ii) of this subparagraph more than once during an IPC period;

(C) uses the HHSC Understanding Program Eligibility - CLASS/DBMD form to provide an oral and written explanation to the individual or LAR, and obtain the individual's or LAR's signature and date on the form, to acknowledge understanding of the following:

(i) the eligibility requirements for:

(I) CLASS Program services, as described in §259.51(a) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(II) CFC services for to individuals who do not receive MAO Medicaid, as described in §259.51(b) of this subchapter; and

(III) CFC services for individuals who receive MAO Medicaid, as described in §259.51(c) of this subchapter; and

(ii) that CLASS Program services or CFC services may be terminated as described in §§259.161, 259.163, 259.165, and 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy);

(D) gives the individual and the LAR or actively involved person a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(E) has the individual or LAR select a CMA and DSA by completing an HHSC Selection Determination form as described in the Community Living Assistance and Support Services Provider Manual;

(F) educates the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(G) documents that the case manager complied with subparagraphs (A) - (F) of this paragraph; and

(3) a DSA staff person:

(A) provides an oral and written explanation of the following to the individual and LAR or actively involved person:

(i) that the individual, LAR, or actively involved person may report an allegation of abuse, neglect, or exploitation to DFPS by calling the toll-free telephone number at 1-800-252-5400;

(ii) the process by which the individual, LAR, or actively involved person may file a complaint regarding CLASS Program services or CFC services provided by the DSA as required by 40 TAC §49.309;

(iii) that the HHSC Complaint and Incident Intake toll-free telephone number at 1-800-458-9858 may be used to file a complaint; and

(iv) how to contact the DSA;

(B) educates the individual, LAR, and actively involved person about protecting the individual from abuse, neglect, and exploitation; and

(C) documents that the staff person complied with subparagraphs (A) and (B) of this paragraph.

(d) Except as provided in subsection (e) of this section, no later than five business days after becoming aware that an individual's need for a CLASS Program service or CFC service changes, the case manager must:

(1) convene a service planning team meeting in person or by videoconferencing in which the service planning team:

(A) develops a proposed revised IPC;

(B) if the proposed revised IPC includes nursing or CFC PAS/HAB:

(i) identifies whether the service is critical to the individual's health and safety, as required by §259.89(a)(2) of this subchapter; and

(ii) develops a new or revised service backup plan for the service in accordance with §259.89 of this subchapter;

(C) if the IPC is revised because the individual wants to receive a service through the CDS option, identifies on the proposed revised IPC:

(i) the name of the individual's FMSA; and

(ii) the type and estimated units of each CLASS Program service and CFC service the individual wants to receive through the CDS option;

(D) develops any revised IPPs;

(E) if the individual's needs have substantially changed, develops a revised HHSC IPP Addendum form;

(F) if the IPC needs to be revised to add CFC PAS/HAB or change the amount of CFC PAS/HAB, develops a new or revised PAS/HAB plan; and

(G) if transportation as a habilitation activity or as an adaptive aid is included on the proposed revised IPC, develops a new or revised individual transportation plan; and

(2) if the individual may need cognitive rehabilitation therapy, assist the individual to obtain an assessment as required by §259.311(h) of this chapter (relating to CMA Service Delivery).

(e) If an individual receiving CFC PAS/HAB or the LAR requests CFC support management during an IPC year, the case manager must revise the IPC, as described in the *Community Living Assistance and Support Services Provider Manual*.

(f) A case manager must:

(1) ensure that a proposed renewal IPC or proposed revised IPC developed in accordance with subsection (c) or (d) of this section meets the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter; and

(2) ensure that a renewal IPP or revised IPP, developed in accordance with subsection (c) or (d) of this section, is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(g) If an individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC or proposed revised IPC developed in accordance with subsection (c) or (d) of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA;

(2) for a proposed renewal IPC, at least 30 calendar days before the end of the individual's IPC period:

(A) submit to HHSC for its review:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form provided by the DSA in accordance with §259.75(a)(3) of this division;

(vi) the ID/RC Assessment authorized by HHSC;

(vii) the HHSC Non-Waiver Services form;

(viii) Choice Lists for the CLASS Program;

(ix) a service backup plan, if required by subsection (c)(1)(H) of this section;

(x) the new individual transportation plan, if required by subsection (c)(1)(I) of this section;

(xi) the HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by:

(I) §259.255 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than \$500);

(II) §259.257 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More);

(III) §259.275 of this chapter (relating to Requirements for Authorization to Purchase a Minor Home Modification); and

(IV) §259.361 of this chapter;

(xii) the HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xiii) denial documentation from non-waiver resources, if any; and

(xiv) if a skilled or a specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan, if required by subsection (c)(1)(G) of this section;

(v) a service backup plan, if required by subsection (c)(1)(H) of this section; and

(vi) the new individual transportation plan, if required by subsection (c)(1)(I) of this section; and

(C) if the renewal IPC includes a service through the CDS option, send the FMSA a copy of:

(i) the signed proposed renewal IPC;

(ii) the signed renewal IPPs;

(iii) the new HHSC IPP Addendum form;

(iv) the new PAS/HAB plan, if required by subsection (c)(1)(G) of this section;

(v) a service backup plan, if required by subsection (c)(1)(H) of this section; and

(vi) the new individual transportation plan, if required by subsection (c)(1)(I) of this section; and

(3) for a proposed revised IPC, at least 30 calendar days before the effective date of the proposed revised IPC determined by the service planning team:

(A) submit to HHSC for its review:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the HHSC Non-Waiver Services form;

(v) the completed HHSC CLASS/DBMD Nursing Assessment form;

(vi) a new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(vii) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section;

(viii) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section;

(ix) an HHSC Request for Adaptive Aids, Medical Supplies, Minor Home Modifications or Dental Services/Sedation form, if required by:

(I) §259.255 of this chapter;

(II) §259.257 of this chapter;

(III) §259.275 of this chapter; and

(IV) §259.361 of this chapter;

(x) an HHSC Specifications for Adaptive Aids/Medical Supplies/Minor Home Modifications form, if required by:

(I) §259.257 of this chapter; and

(II) §259.275 of this chapter;

(xi) denial documentation from non-waiver resources, if any; and

(xii) if a skilled or specialized therapy, the HHSC Therapy Justifications - Attachment to IPP form;

(B) send the DSA a copy of:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(v) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section; and

(vi) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section; and

(C) if the revised IPC includes a service through the CDS option, send the FMSA a copy of:

(i) the signed proposed revised IPC;

(ii) the signed revised IPPs;

(iii) the revised HHSC IPP Addendum form, if required by subsection (d)(1)(E) of this section;

(iv) the new or revised service backup plan, if required by subsection (d)(1)(B)(ii) of this section;

(v) the new or revised PAS/HAB plan, if required by subsection (d)(1)(F) of this section; and

(vi) the new or revised individual transportation plan, if required by subsection (d)(1)(G) of this section.

(h) If an individual or LAR requests a CLASS Program service or a CFC service that the case manager or DSA has determined does not meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) or §259.65(b) of this subchapter, the CMA must, in accordance with the *Community Living Assistance and Support Services Provider Manual*, send the individual or LAR written notice of the denial or proposed reduction of the requested CLASS Program service, copying the DSA and, if applicable, the FMSA.

(i) If a CMA is required to send a written notice of the denial or proposed reduction of a CLASS Program service or CFC service, as described in subsection (h) of this section, the CMA must:

(1) at least 30 calendar days before the end of the IPC period, submit to HHSC for its review:

(A) a proposed renewal IPC or proposed revised IPC that includes the type and amount of CLASS Program services or CFC services in dispute and not in dispute, and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the renewal IPPs;

(C) the new or revised HHSC IPP Addendum form;

(D) the new or revised PAS/HAB plan, if required by subsection (c)(1)(G) or (d)(1)(F) of this section; and

(E) the new or revised individual transportation plan, if required by subsection (c)(1)(I) or (d)(1)(G) of this section; and

(2) if the individual receives a service through the CDS option, send the FMSA a copy of the documents submitted to HHSC in accordance with paragraph (1) of this subsection.

(j) At HHSC's request, a CMA must submit additional documentation supporting a proposed renewal IPC or proposed revised IPC submitted to HHSC no later than 10 calendar days after the date of HHSC's request.

(k) If HHSC determines that a proposed renewal IPC or proposed revised IPC has an IPC cost at or below the amount in §259.51(a)(4) of this subchapter and the CLASS Program services and CFC services specified in the IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter:

(1) HHSC notifies the individual's CMA, in writing, that the renewal IPC or revised IPC is authorized;

(2) the CMA must send a copy of the authorized renewal or revised IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA; and

(3) the CMA and the DSA must:

(A) electronically access MESAV to determine if the information on the renewal or revised IPC is consistent with the information in MESAV;

(B) if the information on the renewal or revised IPC is inconsistent with the information in MESAV, notify HHSC of the inconsistency; and

(C) initiate CLASS Program services and CFC services for the individual in accordance with the individual's renewal or revised IPC no later than seven calendar days after the CMA receives HHSC's notification.

(l) If an individual's IPC period expires before HHSC approves a proposed renewal IPC:

(1) a CMA and DSA must continue to provide services to the individual until HHSC authorizes the proposed renewal IPC to ensure continuity of care and prevent the individual's health and welfare from being jeopardized; and

(2) if HHSC authorizes the proposed renewal IPC as described in subsection (k)(1) of this section, HHSC will reimburse the CMA and DSA for services provided, as required by paragraph (1) of this subsection, for a period of not more than 180 calendar days before the date HHSC receives the documentation described in subsection (i)(2) of this section from the DSA.

(m) The process by which an individual's CLASS Program services or CFC services are terminated or denied based on HHSC's review of a proposed renewal IPC or proposed revised IPC is described in §259.83(c) - (e) of this division (relating to Utilization Review of an IPC by HHSC).

(n) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

§259.81. Revised IPC and Revised IPP for Services Provided to Prevent Immediate Jeopardy.

(a) If a DSA provides nursing, respite, an adaptive aid, dental treatment, or CFC PAS/HAB to an individual that is not included on the individual's IPC in accordance with §259.359(b) of this chapter (relating to DSA: Service Delivery), the DSA, must, no later than seven calendar days after providing the service, submit to the CMA:

(1) documentation describing the circumstances necessitating the provision of the new service or the increase in the amount of the existing service; and

(2) documentation by an RN of the RN's determination that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy as required by §259.359(b) of this chapter.

(b) No later than seven calendar days after the date a CMA receives the documentation described in subsection (a) of this section, the CMA must:

(1) based on the documentation, develop a proposed revised IPC and a revised IPP; and

(2) submit the proposed revised IPC, revised IPP, and documentation to HHSC.

(c) HHSC authorizes a proposed revised IPC submitted in accordance with subsection (b) of this section only if, after reviewing the documentation described in subsection (a) of this section, it determines that the service was necessary to prevent an individual's health and safety from being placed in immediate jeopardy. At HHSC's request, a CMA must submit additional documentation supporting the proposed revised IPC to HHSC within 10 calendar days after HHSC's request.

(d) If HHSC does not authorize a proposed revised IPC submitted in accordance with subsection (b) of this section, HHSC does not pay the DSA for the service provided.

§259.83. Utilization Review of an IPC by HHSC.

(a) At HHSC's discretion, HHSC conducts a utilization review of an IPC to determine if:

(1) the IPC cost is at or below the amount in §259.51(a)(4) of this subchapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); and

(2) the CLASS Program services and CFC services specified in the IPC meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter (relating to Development of an Enrollment IPC).

(b) If requested by HHSC, a program provider must submit documentation supporting an IPC to HHSC no later than 10 calendar days after HHSC's request.

(c) If HHSC determines that an IPC does not have an IPC cost at or below the amount in §259.51(a)(4) of this subchapter, HHSC notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services and CFC services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) HHSC denies or proposes reduction of a CLASS Program service or CFC service if HHSC determines that an IPC has an IPC cost

at or below the amount in §259.51(a)(4) of this subchapter but one or more of the CLASS Program services or CFC services specified in the IPC do not meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this subchapter.

(e) If HHSC denies or proposes reduction of a CLASS Program service or CFC service, as described in subsection (d) of this section, HHSC:

(1) modifies and authorizes the IPC; and

(2) notifies the individual's CMA, in writing, of the action taken.

(f) If HHSC notifies a CMA of the denial or proposed reduction of an individual's CLASS Program services or CFC services and of the IPC modified in accordance with subsection (e) of this section:

(1) for a denial of a CLASS Program service or CFC service:

(A) the CMA must comply with §259.155(c) of this chapter (relating to Denial of a CLASS Program Service or CFC Service); and

(B) the CMA and DSA must comply with §259.155(d) of this chapter; or

(2) for a proposed reduction of a CLASS Program service or CFC service:

(A) the CMA must comply with §259.159(c) and (e) of this chapter (relating to Reduction of a CLASS Program Service or CFC Service); and

(B) the DSA must comply with §259.159(d) and (e) of this chapter.

(g) The IPC period of an enrollment IPC or a renewal IPC modified by HHSC in accordance with subsection (e) of this section does not change as a result of HHSC's modification.

§259.85. Tracking Annual Renewal of an ID/RC Assessment by a DSA.

(a) A DSA must have and implement written policies and procedures to ensure compliance with §259.75(a)(2) and (3) of this division (relating to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria).

(b) A DSA's written policies and procedures must include using a written or electronic tracking system that alerts the DSA to activities that must occur for the DSA to timely submit documentation to HHSC as required by §259.75(a)(2) of this division.

§259.87. Tracking Annual Renewal of an IPC by a CMA.

(a) A CMA must have and implement written policies and procedures to ensure compliance with §259.79(g)(2)(A) of this division (relating to Renewal and Revision of an IPC).

(b) A CMA's written policies and procedures must include using a written or electronic tracking system that alerts the CMA to activities that must occur for the CMA to timely submit documentation to HHSC as required by §259.79(g)(2)(A) of this division.

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. SERVICE BACKUP PLANS

26 TAC §259.89

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 section affects Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§259.89. Service Backup Plans.

(a) If an individual's IPC includes nursing or CFC PAS/HAB, the case manager must ensure that:

(1) the service planning team determines whether nursing or CFC PAS/HAB is critical to the individual's health and safety;

(2) the individual's IPC identifies whether nursing or CFC PAS/HAB is critical to the individual's health and safety; and

(3) the service planning team develops a service backup plan for each service identified as critical using the HHSC Provider Agency Model Service Backup Plan form, unless the service will be provided through the CDS option.

(b) A case manager must ensure that:

(1) a service backup plan developed in accordance with subsection (a)(3) of this section addresses any risk that might exist to the health and safety of the individual; and

(2) if an action listed in the service backup plan includes the use of a natural support, the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety.

(c) If a service backup plan is implemented, a DSA must:

(1) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(2) document whether or not the plan was effective; and

(3) revise the plan with input from the service planning team if the DSA determines the plan was ineffective.

(d) Requirements for developing a service backup plan for an individual receiving nursing or CFC PAS/HAB through the CDS option are described in 40 TAC §41.217 (relating to Employer Responsibilities Regarding Service Backup Plan).

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

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SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

26 TAC §259.101, §259.103

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.

§259.101. Individual's Right to a Fair Hearing.

An individual is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules), if:

(1) the individual's request for enrollment into the CLASS Program is denied or is not acted upon with reasonable promptness; or

(2) the individual's CLASS Program services or CFC services have been denied, suspended, reduced, or terminated by HHSC.

§259.103. Mandatory Participation Requirements of an Individual.

An individual or LAR must comply with the following mandatory participation requirements:

(1) completing and submitting an application for Medicaid financial eligibility to HHSC no later than 30 calendar days after the case manager's initial in-person visit described in §259.61(a)(2) of this chapter (relating to Process for Enrollment of an Individual) or within another time frame permitted by §259.61(c) of this chapter;

(2) participating on the service planning team to:

(A) develop an enrollment IPC and an enrollment IPP, as described in §259.65 of this chapter (relating to Development of an Enrollment IPC) and §259.67 of this chapter (relating to Development of IPPs); and

(B) develop renewal and revised IPC and IPPs, as described in §259.79 of this chapter (relating to Renewal and Revision of an IPC);

(3) reviewing, agreeing to, signing, and dating an IPC and IPPs in accordance with §259.65 of this chapter, §259.67(c) of this chapter, and §259.79 of this chapter;

(4) cooperating with the CMA and DSA in the delivery of CLASS Program services or CFC services listed on the individual's IPC, including:

(A) working with the CMA and DSA to schedule meetings;

(B) attending a scheduled meeting with the case manager or a service provider;

(C) being available to receive CLASS Program services and CFC services;

(D) notifying the CMA or DSA in advance if the individual or LAR is unable to attend a scheduled meeting or is unavailable to receive services in the individual's residence; and

(E) admitting CMA and DSA representatives to the individual's residence for a scheduled meeting or to receive CLASS Program services or CFC services;

(5) cooperating with the DSA's service providers to ensure progress toward achieving the goals and outcomes described in the IPP for each CLASS Program service or CFC service listed on the IPC;

(6) if found by HHSC to be financially eligible for CLASS Program services based on the special institutional income limit, paying the required co-payment in a timely manner;

(7) notifying the CMA and DSA if the individual receives notice from HHSC of a change in the status of the individual's financial eligibility for Medicaid;

(8) not engaging in criminal behavior in the presence of the case manager or a service provider;

(9) not permitting a person present in the individual's residence to engage in criminal behavior in the presence of a service provider or the case manager;

(10) not engaging in a pattern of harassment of the case manager or a service provider that interferes with the ability to provide CLASS Program services or CFC services;

(11) not acting in a manner that is threatening to the health and safety of the case manager or a service provider;

(12) not permitting a person present in the individual's residence to:

(A) engage in a pattern of harassment of the case manager or a service provider that interferes with the ability to provide CLASS Program services or CFC services; or

(B) act in a manner that is threatening to the health and safety of the case manager or a service provider;

(13) in accordance with §259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy), not exhibiting behavior or permitting a person present in the individual's residence to exhibit behavior that places the health and safety of the case manager or a service provider in immediate jeopardy;

(14) not initiating or participating in fraudulent health care practices;

(15) not engaging in behavior that endangers the individual's health or safety; and

(16) not permitting a person present in the individual's residence to engage in behavior that endangers the individual's health or safety.

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

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SUBCHAPTER D. TRANSFER, DENIAL,
SUSPENSION, REDUCTION, AND
TERMINATION OF SERVICES

26 TAC §§259.151, 259.153, 259.155, 259.157, 259.159,
259.161, 259.163, 259.165, 259.167, 259.169, 259.171

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.

§259.151. Coordination of Transfers.

(a) If a case manager receives a request from an individual or LAR to transfer to another CMA or DSA or receives notice from HHSC that an individual has requested to transfer to another CMA or DSA, the case manager must:

(1) document in the individual's record the date the case manager received the request or notice to transfer;

(2) give the individual and LAR a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(3) have the individual or LAR select a CMA or DSA by completing an HHSC Selection Determination form; and

(4) within three business days, make transfer arrangements in accordance with the *Community Living Assistance and Support Services Provider Manual* with:

(A) the individual or LAR; and

(B) the receiving CMA or DSA.

(b) A case manager must establish an effective date for an individual's transfer to another CMA or DSA that:

(1) is at least 14 calendar days after the date the case manager receives the request or notice described in subsection (a) of this section; and

(2) is agreed to by the current CMA, the individual or LAR, and the receiving CMA or DSA.

(c) If an individual is transferring to another DSA, the case manager must obtain the number of service units to be transferred for each service on the individual's current IPC from the transferring DSA.

(d) A current case manager must submit the following completed documents to HHSC before the effective date of a transfer to another CMA or DSA:

(1) the individual's current IPC;

(2) the HHSC IPC Service Delivery Transfer Worksheet form; and

(3) the HHSC Selection Determination form.

(e) The IPC period of an enrollment IPC or renewal IPC does not change when an individual transfers to another CMA or DSA.

(f) If a case manager receives a request from an individual or LAR to transfer to another FMSA or receives notice from HHSC that an individual has requested to transfer to another FMSA, the case manager must:

(1) give the individual and LAR a written list of FMSAs serving the county in which the individual resides;

(2) have the individual or LAR select an FMSA from the list described in paragraph (1) of this subsection; and

(3) comply with 40 TAC §41.403(c) (relating to Transfer Process).

§259.153. Denial of a Request for Enrollment into the CLASS Program.

(a) HHSC denies an individual's request for enrollment into the CLASS Program if:

(1) the individual does not meet the eligibility criteria described in §259.51 of this chapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services); or

(2) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services or CFC services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) If HHSC denies an individual's request for enrollment, HHSC sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program and includes in the notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing). HHSC sends a copy of the written notice to the individual's DSA, CMA, and if selected, FMSA.

§259.155. Denial of a CLASS Program Service or CFC Service.

(a) HHSC denies a CLASS Program service or CFC service on an individual's IPC, based on a review described in §259.69 of this chapter (relating to HHSC's Review of a Proposed Enrollment IPC), §259.79 of this chapter (relating to Renewal and Revision of an IPC), or §259.83 of this chapter (relating to Utilization Review of an IPC by HHSC), if HHSC determines that the CLASS Program service or CFC service does not meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this chapter (relating to Development of an Enrollment IPC).

(b) If HHSC denies a CLASS Program service or CFC service on an individual's IPC, HHSC modifies the IPC and notifies the individual's CMA, in writing, of the denial.

(c) If a CMA receives a written notice from HHSC denying a CLASS Program service or CFC service, the CMA must:

(1) send a copy of the modified IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA;

(2) in accordance with the *Community Living Assistance and Support Services Provider Manual*, send written notice to the individual or LAR of the denial of the service, copying the individual's DSA and, if the individual receives a service through the CDS option, the FMSA; and

(3) include in the notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) A CMA and DSA must:

(1) electronically access MESAV to determine if the information on the modified IPC is consistent with the information in MESAV;

(2) if the information on the modified IPC is inconsistent with the information in MESAV, notify HHSC of the inconsistency; and

(3) implement the modified IPC.

§259.157. Suspension of CLASS Program Services or CFC Services.

(a) HHSC suspends an individual's CLASS Program services or CFC services if the individual:

(1) is admitted to one of the following facilities:

(A) an ICF/IID, unless the individual is receiving out-of-home respite in the facility in accordance with §259.361 of this chapter (relating to Respite and Dental Treatment);

(B) a nursing facility, unless the individual is receiving out-of-home respite in the facility in accordance with §259.361 of this chapter;

(C) an ALF;

(D) a residential child-care facility, unless it is an agency foster home;

(E) a hospital;

(F) a mental health facility;

(G) an inpatient chemical dependency treatment facility;

(H) a residential facility operated by the Texas Workforce Commission;

(I) a residential facility operated by the Texas Juvenile Justice Department;

(J) a jail; or

(K) a prison; or

(2) leaves the state.

(b) HHSC suspends services during the time that an individual is admitted to a facility or that the individual spends outside the state but is limited to 180 consecutive calendar days, unless HHSC approves an extension in accordance with subsection (g) of this section.

(c) Within two business days after a CMA becomes aware that an individual has been admitted to a facility or has left the state as described in subsection (a) of this section, the CMA must submit a written request that HHSC suspend the individual's services.

(d) If HHSC suspends an individual's services, HHSC sends a written notice to the CMA that includes the effective date of the suspension and the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

(e) Within two business days after a CMA receives a notice described in subsection (d) of this section, the CMA must send the notice to the individual or LAR and, if applicable, to the FMSA.

(f) HHSC may approve one or more 30-calendar-day extensions of a suspension if extenuating circumstances exist and the indi-

vidual anticipates resuming participation in the CLASS Program during the extension.

(g) To request an extension described in subsection (f) of this section, a CMA must:

(1) submit the request in writing to HHSC; and

(2) include documentation of the extenuating circumstances.

(h) During the time HHSC suspends an individual's services, as described in subsection (b) of this section, the individual is not considered to be residing in a facility listed in subsection (a)(1) of this section or out of the state.

§259.159. Reduction of a CLASS Program Service or CFC Service.

(a) HHSC reduces a CLASS Program service or CFC service on an individual's IPC, based on a review described in §259.79 of this chapter (relating to Renewal and Revision of an IPC) or §259.83 of this chapter (relating to Utilization Review of an IPC by HHSC), if HHSC determines that the CLASS Program service or CFC service on the IPC does not meet the requirements described in §259.65(a)(1)(E)(iii) or (iv) and §259.65(b) of this chapter (relating to Development of an Enrollment IPC).

(b) If HHSC proposes to reduce a CLASS Program service or CFC service on the individual's IPC, HHSC modifies the IPC and notifies the individual's CMA, in writing, of the proposed reduction.

(c) After receiving a written notice from HHSC proposing to reduce a CLASS Program service or CFC service, a CMA must:

(1) in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(A) send written notice to the individual or LAR of the proposal to reduce the service, copying the individual's DSA and, if the individual receives a service through the CDS option, the FMSA;

(B) include with the written notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing); and

(C) give the individual or LAR 10 calendar days to respond to the written notice before taking any action to reduce the service; and

(2) send a copy of the modified IPC to the DSA and, if the individual receives a service through the CDS option, to the FMSA.

(d) If the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service or CFC service, as specified in the written notice, the modified IPC described in subsection (b) of this section may not be implemented and the DSA must provide the service to the individual in the amount authorized in the prior IPC while the appeal is pending.

(e) If an individual or LAR does not request a fair hearing before the effective date of the reduction of a CLASS Program service or CFC service, a CMA and DSA must:

(1) electronically access MESAV to determine if the information on the modified IPC is consistent with the information in MESAV;

(2) if the information on the modified IPC is inconsistent with the information in MESAV, notify HHSC of the inconsistency; and

(3) implement the modified IPC.

§259.161. Termination of CLASS Program Services and CFC Services with Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements.

(a) HHSC terminates an individual's CLASS Program services and CFC services if:

(1) the individual does not meet the eligibility criteria described in §259.51 of this chapter (relating to Eligibility Criteria for CLASS Program Services and CFC Services);

(2) the individual is admitted to one of the facilities listed in §259.157(a)(1) of this subchapter (relating to Suspension of CLASS Program Services or CFC Services) for more than 180 consecutive calendar days or beyond an extension of the individual's suspension that HHSC approved in accordance with §259.157(f) of this subchapter;

(3) the individual leaves the state for more than 180 consecutive calendar days and HHSC has not extended the individual's suspension in accordance with §259.157(f) of this subchapter; or

(4) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services or CFC services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) No later than two business days after a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must:

(1) send a written request to HHSC to terminate CLASS Program services and CFC services for the individual;

(2) send written supporting documentation with the request; and

(3) if the reason for the requested termination of services is for the reason described in subsection (a)(4) of this section, include in the written supporting documentation the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(c) Except as provided in subsection (e) of this section, HHSC notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS program services and CFC services.

(d) After receiving a written notice from HHSC authorizing the proposed termination of CLASS Program services and CFC services, a CMA must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(1) send written notice of the proposed termination of services to the individual or LAR within two business days, copying the individual's DSA and, if the individual is receiving a service through the CDS option, to the FMSA; and

(2) include in the written notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

(e) If the reason for the proposed termination of CLASS Program services and CFC services is based on an individual not meeting the eligibility criteria described in §259.51(a)(4) of this chapter and HHSC approves the proposed termination, HHSC:

(1) sends written notice to the individual or LAR of the proposal to terminate CLASS Program services and CFC services, copying the written notice to the individual's DSA, CMA, and, if the individual is receiving a service through the CDS option, to the FMSA;

(2) includes in the notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter; and

(3) sends a copy of the written notice to the individual's DSA, CMA, and, if the individual is receiving a service through the CDS option, to the FMSA.

(f) If an individual or LAR requests a fair hearing before the effective date of the termination of CLASS Program services and CFC services, as specified in the written notice, the DSA must provide services to the individual in the amounts authorized in the IPC while the appeal is pending.

§259.163. Termination of CLASS Program Services and CFC Services with Advance Notice Because of Non-compliance with Mandatory Participation Requirements.

(a) HHSC may terminate an individual's CLASS Program services and CFC services if the individual refuses to comply with a mandatory participation requirement described in §259.103 of this chapter (relating to Mandatory Participation Requirements of an Individual).

(b) If a CMA becomes aware that an individual has not complied with a mandatory participation requirement described in §259.103 of this chapter, the CMA must immediately attempt to resolve the situation, including facilitating at least one in-person meeting between:

(1) the individual or LAR;

(2) a representative from the CMA; and

(3) a representative from the DSA.

(c) If, after making attempts to resolve the situation as required by subsection (b) of this section, a CMA determines that the situation cannot be resolved, the CMA must request, in writing, that HHSC terminate CLASS Program services and CFC services for the individual. The request must be sent to HHSC no later than two business days after the CMA's determination that the situation cannot be resolved and be supported by written documentation. The written documentation must include a description of:

(1) the situation that resulted in the request to terminate CLASS Program services and CFC services; and

(2) the attempts by the CMA and DSA to resolve the situation, including in-person meetings with the individual or LAR.

(d) HHSC notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS Program services and CFC services.

(e) After receiving a written notice from HHSC authorizing the proposed termination of CLASS Program services and CFC services, a CMA must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(1) send written notice of the proposed termination of services to the individual or LAR within two business days, copying the individual's DSA and, if selected, FMSA; and

(2) include in the written notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

(f) If an individual or LAR requests a fair hearing before the effective date of the termination of CLASS Program services and CFC services, as specified in the written notice, the DSA must provide the services to the individual in the amounts authorized in the IPC while the appeal is pending.

§259.165. Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy.

(a) HHSC terminates an individual's CLASS Program services and CFC services if:

(1) the CMA or DSA has factual information confirming the death of the individual;

(2) the CMA or DSA receives a clear written statement signed by the individual that the individual no longer wishes to receive CLASS Program services and CFC services;

(3) the individual's whereabouts are unknown, and the post office returns mail directed to the individual by the CMA or DSA, indicating no forwarding address; or

(4) the CMA or DSA establishes that the individual has been accepted for Medicaid services by another state.

(b) Within two business days after a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must send a written request to HHSC to terminate CLASS Program services and CFC services for the individual. The written request to HHSC must include documentation supporting the request.

(c) HHSC notifies an individual's CMA, in writing, of whether it authorizes the termination of CLASS Program services and CFC services for the individual.

(d) After receiving a written notice from HHSC authorizing the termination of CLASS Program services and CFC services, a CMA must, in accordance with the *Community Living Assistance and Support Services Provider Manual*:

(1) send written notice to the individual or LAR of the proposed termination, copying the individual's DSA and, if the individual is receiving a service through the CDS option, the FMSA; and

(2) include with the written notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

§259.167. Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy.

(a) HHSC may terminate an individual's CLASS Program services and CFC services if the individual or a person in the individual's residence exhibits behavior that places the health and safety of the CMA's case manager or the DSA's service provider in immediate jeopardy.

(b) If a CMA or DSA becomes aware that a situation described in subsection (a) of this section exists, the CMA or DSA must:

(1) immediately file a report with the appropriate law enforcement agency and, if appropriate, make an immediate referral to DFPS; and

(2) notify the CMA or DSA, as appropriate, and HHSC by telephone of the situation no later than the business day after the day the CMA or DSA becomes aware of the situation.

(c) A CMA must, working with an individual's DSA, attempt to resolve the situation.

(d) If, after making attempts to resolve the situation as required by subsection (c) of this section, a CMA determines that the situation cannot be resolved, the CMA must request, in writing, that HHSC terminate CLASS Program services and CFC services for the individual. The request must be sent to HHSC no later than two business days after HHSC was notified of the situation by the CMA or DSA and be supported by written documentation.

(e) A CMA must include in the written documentation required by subsection (d) of this section:

(1) a description of the situation that resulted in the request to terminate the individual's CLASS Program services and CFC services;

(2) a detailed description of the attempts by the CMA to resolve the situation; and

(3) if available, a copy of any report issued by a law enforcement agency or DFPS regarding the situation.

(f) HHSC notifies the individual's CMA and DSA, in writing, of whether it authorizes the termination of CLASS Program services and CFC services.

(g) Upon receipt of a written notice from HHSC authorizing the termination of CLASS Program services and CFC services, a CMA must:

(1) no later than the date of the termination of services, send written notice to the individual or LAR of the termination of services, copying the DSA and, if the individual receives a service through the CDS option, the FMSA; and

(2) include in the written notice the individual's right to request a fair hearing in accordance with §259.101 of this chapter (relating to Individual's Right to a Fair Hearing).

§259.169. Information About Services After Termination.

If an individual's CLASS Program services and CFC services are terminated in accordance with §§259.161, 259.163, 259.165, or 259.167 of this chapter (relating to Termination of CLASS Program Services and CFC Services With Advance Notice for Reasons Other Than Non-compliance with Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements; Termination of CLASS Program Services and CFC Services Without Advance Notice for Reasons Other Than Behavior Causing Immediate Jeopardy; and Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy), the case manager must inform the individual of:

(1) alternative long-term services and supports in the community, including CFC services available through a managed care organization; and

(2) institutional services.

§259.171. Requirement to Submit a Fair Hearing Request Summary to HHSC.

(a) When HHSC receives a request for a fair hearing from an individual or LAR, HHSC sends a copy of the request to the individual's CMA.

(b) A CMA must, no later than one business day after receiving an individual's request for a fair hearing from HHSC, submit a completed HHSC Fair Hearing Request Summary form, as described in the *Community Living Assistance and Support Services Provider Manual*, to HHSC.

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

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SUBCHAPTER E. SUPPORT FAMILY
SERVICES DIVISION
DIVISION 1. INTRODUCTION

26 TAC §259.201, §259.203

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, 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.

§259.201. Contracting Requirements.

A support family agency must comply with:

- (1) this chapter; and
- (2) 40 TAC Chapter 49 (relating to Contracting for Community Services).

§259.203. Eligibility.

(a) To receive support family services, an individual must be under 18 years of age.

(b) An individual who receives support family services must not receive:

- (1) CFC PAS/HAB;
- (2) CFC ERS; or
- (3) transportation as a habilitation activity or as an adaptive aid.

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

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DIVISION 2. SUPPORT FAMILY AGENCY

26 TAC §§259.205, 259.207, 259.209, 259.211, 259.213

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.

§259.205. Support Family Agency Functions.

A support family agency must provide ongoing recruitment, support, training, and monitoring of its support family services including:

- (1) ensuring that a support family is available to serve an eligible individual;
- (2) helping an individual transition from institutional services to support family services;
- (3) supporting an individual living with a support family to prevent placement breakdown or admission to an institution;
- (4) providing an alternative support family when an individual's placement with a support family is no longer available or appropriate;
- (5) establishing a safe and permanent placement for an individual as approved by the service planning team;
- (6) training the support family to provide the support family services the service planning team assigns and as documented on the individual's IPC and IPP; and
- (7) monitoring and reporting to the case manager about the individual's placement, as often as needed but at least monthly, as described in §259.211(5) of this division (relating to Ongoing Support) and §259.213 of this division (relating to Monthly Monitoring).

§259.207. Pre-Placement Activities.

(a) After receiving a referral from an individual's case manager for support family services, a support family agency must:

- (1) meet with the individual and LAR;
- (2) identify the support family services the individual needs;
- (3) obtain any evaluations, written records, or other necessary information about the individual;
- (4) determine the criteria for a support family that will meet the specific needs of the individual;
- (5) locate a support family; and
- (6) keep the case manager informed of placement progress.

(b) Before placement, a support family agency must:

- (1) ensure that a support family is verified by a child-placing agency licensed by HHSC;
- (2) provide orientation, to the support family on the support family services the support family agency identified the individual will need;
- (3) introduce the individual and LAR to the support family in person; and
- (4) obtain the LAR's agreement to the placement.

(c) A support family agency must facilitate the completion of written agreements and authorizations between the individual's LAR, the support family, and the support family agency. The written documents must include:

(1) designation of who will participate in decisions about services, including any necessary delegation of authority for decisions by the LAR;

(2) a description of how visits between the individual and the LAR will be arranged;

(3) designation of who has the authority to make health care decisions for the individual, such as consenting to medical treatment, including any necessary delegation of this authority by the person with the legal responsibility to make health care decisions;

(4) preferences agreed upon for:

(A) religious issues;

(B) cultural practices;

(C) problem resolution processes; and

(D) the type and amount of involvement by the LAR;

(5) plans for routine and emergency communication and information exchange, including both oral and written communication; and

(6) documentation of the financial responsibilities of all parties.

§259.209. Placement.

After completion of the authorizations and agreements described in §259.207(c) of this division (relating to Pre-Placement Activities), a support family, an LAR, and the support family agency must:

(1) participate in the service planning team meeting described in §259.65(a)(1) of this chapter (relating to Development of an Enrollment IPC) in which the service planning team:

(A) develops a transition plan;

(B) includes support family services on the proposed enrollment IPC; and

(C) develops an IPP for support family services;

(2) provide copies of the agreements and authorizations listed in §259.207(c) of this division to the case manager;

(3) train the support family to provide the support family services as described on the IPP; and

(4) assume the responsibility for moving the individual and the individual's possessions into the support family home.

§259.211. Ongoing Support.

After an individual is placed with a support family, a support family agency must:

(1) ensure continued compliance with §259.201 of this subchapter (relating to Contracting Requirements);

(2) provide the support family with information on how to contact the support family agency staff at any time;

(3) ensure accurate documentation of service delivery in accordance with the IPC and IPP;

(4) assist the support family and the individual in accessing school and preschool services;

(5) provide monthly progress notes to the case manager, including monthly summaries of:

(A) CFC PAS/HAB activities;

(B) socialization activities;

(C) use of non-waiver services; and

(D) other services included on the IPP;

(6) provide additional training to the support family as identified by the service planning team;

(7) participate in the service planning team meetings as requested by the case manager, the LAR, the support family agency, or the DSA; and

(8) provide to the case manager documentation of any changes to the agreements or authorizations described in §259.207(c) of this division (relating to Pre-Placement Activities) within seven calendar days after the change occurs.

§259.213. Monthly Monitoring.

(a) A support family agency must visit a support family's home at least once a month to determine if:

(1) placement remains beneficial to the individual;

(2) the environment remains healthy and safe; and

(3) the rights of the individual are being protected.

(b) To ensure that the individual's rights are being protected, during a visit described in subsection (a) of this section, a support family agency must determine if:

(1) there is no evidence of abuse, neglect, or exploitation of the individual;

(2) the individual participates in community functions;

(3) the individual has adequate personal belongings; and

(4) there are no restrictions on the individual's personal property, including money.

(c) A support family agency must document each monthly visit, including verification of each item listed in subsections (a) and (b) of this section, and submit the documentation to the case manager no later than seven calendar days after the visit.

(d) A support family agency must inform the case manager of any changes needed to an individual's IPP no later than five calendar days after the date the support family agency became aware of the need for a change.

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

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Health and Human Services Commission

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DIVISION 3. SUPPORT FAMILIES

26 TAC §259.215, §259.217

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.

§259.215. Support Family Requirements.

(a) A support family must be:

(1) an agency foster home verified by a child-placing agency licensed by HHSC; and

(2) a contractor of the support family agency who places an individual with the support family.

(b) A support family must not provide services to more than three unrelated individuals at any one time in their home.

(c) A support family must ensure that:

(1) an individual participates in age-appropriate community activities; and

(2) the support family home environment is healthy and safe for the individual.

(d) A support family must provide services in a residence that the support family owns or leases. The residence must be a typical residence in a neighborhood and meet the needs of an individual and LAR.

§259.217. Support Family Duties.

(a) A support family must provide services to an individual as authorized on the individual's IPC and as described on the individual's IPP, including:

(1) direct personal assistance with activities of daily living;

(2) assistance with meal planning and preparation;

(3) assistance with housekeeping;

(4) assistance with communication and mobility;

(5) reinforcement of behavioral, educational, and therapeutic activities;

(6) assistance with medications and the performance of tasks delegated by an RN;

(7) supervision for the individual's safety;

(8) transportation related to routine family activities; and

(9) assistance with participation in community activities.

(b) A support family must:

(1) allow an individual's family members and friends access to the individual without arbitrary restrictions, unless exceptional conditions are justified by the individual's service planning team, documented on the IPP, and authorized by HHSC;

(2) assist a school-age individual in receiving educational services five days a week in a six-hour-per-day program provided by the local school district;

(3) ensure that no individual receives educational services at a state supported living center or in a state supported living center educational setting, unless contraindications are documented with justification by the service planning team;

(4) ensure that a preschool-age individual receives an early childhood education with appropriate activities and services, including small group and individual play with peers without disabilities, unless contraindications are documented with justification;

(5) provide an individual with age-appropriate activities that enhance self-esteem and maximize functional level; and

(6) ensure the individual receives medical care prescribed by a physician, including:

(A) doctors' appointments;

(B) medications;

(C) evaluations, therapies, and treatment; and

(D) lab work and other medical tests.

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SUBCHAPTER F. ADAPTIVE AIDS, MINOR HOME MODIFICATIONS, AND CFC ERS
DIVISION 1. ADAPTIVE AIDS

26 TAC §§259.251, 259.253, 259.255, 259.257, 259.259, 259.261, 259.263, 259.265, 259.267

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.

§259.251. Items and Services Purchasable as an Adaptive Aid.

(a) The only items and services that a DSA may purchase or lease as an adaptive aid are listed in the *Community Living Assistance and Support Services Provider Manual*. The repair and maintenance of an adaptive aid, not covered by a warranty, are also purchasable as an adaptive aid.

(b) A DSA may not purchase or lease, as an adaptive aid, an item or service not listed in the *Community Living Assistance and Support Services Provider Manual*.

(c) An adaptive aid must be the exclusive property of the individual to whom it is provided.

§259.253. Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance.

(a) The maximum amount HHSC approves as payment to a DSA for all adaptive aids and dental treatment combined for an individual is \$10,000 per IPC period, which includes the cost of repair and maintenance of an adaptive aid.

(b) To request authorization for repair and maintenance of an adaptive aid up to \$300 per IPC period, a DSA is not required to follow the process described in §259.255 of this division (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than \$500) but must include the amount requested on an individual's IPC as described in §259.65 of this chapter (relating to Development of an Enrollment IPC) or §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(c) A DSA must follow the process for requesting authorization to purchase an adaptive aid described in §259.255 of this division if:

(1) requesting authorization for repair and maintenance of an adaptive aid in an amount that exceeds the \$300 limit described in subsection (b) of this section; or

(2) requesting authorization for repair and maintenance of an adaptive aid that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as an adaptive aid listed in the *Community Living Assistance and Support Services Provider Manual*.

§259.255. Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than \$500.

(a) To purchase an adaptive aid costing less than \$500 for an individual, a CMA must:

(1) ensure that the individual's service planning team completes the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form described in the *Community Living Assistance and Support Services Provider Manual*, evidencing its agreement that the adaptive aid recommended by the appropriate licensed professional is necessary;

(2) no later than 14 calendar days after completing the requirement in paragraph (1) of this subsection, ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the recommended adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) no later than 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to HHSC:

(A) the completed HHSC Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC described in paragraph (2)(A) of this subsection, as applicable; and

(C) the individual's IPP described in paragraph (2)(B) of this subsection.

(b) HHSC reviews the documentation described in subsection (a)(3) of this section and determines whether the proposed IPC is authorized in accordance with §259.69 of this chapter (relating to HHSC's Review of a Proposed Enrollment IPC) or §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(c) HHSC notifies a DSA in MESAV of whether the proposed IPC is authorized. HHSC notifies a CMA, in writing, of whether the proposed IPC is authorized.

§259.257. Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More.

(a) To purchase an adaptive aid costing \$500 or more for an individual, a CMA must:

(1) ensure that the individual or LAR initiates a request for the adaptive aid by completing Part A of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form described in the *Community Living Assistance and Support Services Provider Manual*;

(2) send the partially completed form to the DSA;

(3) ensure that the individual's service planning team includes the cost of the specifications for the adaptive aid, as described in §259.259 of this division (relating to Requirements for Specifications for an Adaptive Aid), in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(4) no later than 14 calendar days after completing the requirements described in paragraph (3) of this subsection, submit to HHSC:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC described in paragraph (3)(A) of this subsection, as applicable; and

(B) the individual's IPP described in paragraph (3)(B) of this subsection.

(b) The cost of the specifications included on an IPC and IPP as required by subsection (a)(3) of this section may not exceed an amount equal to three units of service of behavioral support, occupational therapy, physical therapy, or speech and language pathology, as applicable.

(c) HHSC reviews the documentation described in subsection (a)(4) of this section and determines whether the proposed IPC is authorized in accordance with §259.69 of this chapter (relating to HHSC's Review of a Proposed Enrollment IPC) or §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(d) HHSC notifies a DSA in MESAV of whether the proposed IPC is authorized. HHSC notifies a CMA, in writing, of whether the proposed IPC is authorized.

(e) If HHSC approves the proposed IPC for payment of the specifications, the DSA must:

(1) no later than 30 calendar days after the date HHSC approves the IPC, obtain the specifications regarding the adaptive aid in accordance with §259.259 of this division and ensure that Part B of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form is completed; and

(2) no later than 60 calendar days after obtaining the specifications:

(A) obtain bids from vendors in accordance with §259.261 of this division (relating to Requirements for Bids of an Adaptive Aid);

(B) select a vendor from which to purchase the adaptive aid; and

(C) complete Part C of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form and send the form to the CMA.

(f) A CMA must, no later than 14 calendar days after receipt of the form described in subsection (e)(2)(C) of this section:

(1) complete Part D of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, evidencing that the criteria described in §259.65(b) of this chapter (relating to Development of an Enrollment IPC) are met;

(2) ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the cost of the adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) no later than 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to HHSC:

(A) the completed HHSC Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC described in paragraph (2)(A) of this subsection, as applicable;

(C) the individual's IPP described in paragraph (2)(B) of this subsection; and

(D) documentation regarding bids required by §259.261 of this division.

(g) HHSC reviews the documentation described in subsection (f)(3) of this section and determines whether the proposed IPC is authorized in accordance with §259.69 or §259.79 of this chapter.

(h) HHSC notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. HHSC notifies a CMA, in writing, of whether the proposed IPC is authorized.

§259.259. Requirements for Specifications for an Adaptive Aid.

(a) If HHSC approves payment for specifications for an adaptive aid costing \$500 or more in accordance with §259.257(c) of this division (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More), a DSA must:

(1) obtain specifications from a licensed professional required by HHSC for that adaptive aid, as described in the *Community Living Assistance and Support Services Provider Manual*; and

(2) ensure that the specifications:

(A) include a complete description of the adaptive aid; and

(B) are approved, in writing, by the individual or LAR and the DSA by completing the HHSC Specifications for Adaptive Aids/Minor Home Modifications form described in the *Community Living Assistance and Support Services Provider Manual*.

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

(c) The DSA must provide a copy of the specifications to an individual's CMA.

§259.261. Requirements for Bids of an Adaptive Aid.

(a) As required by §259.257(e)(2)(A) of this division (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More), for a recommended adaptive aid costing \$500 or more, a DSA must obtain comparable bids for the requested adaptive aid from three vendors. Comparable bids describe the adaptive aid and any associated items or modifications identified in the completed HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form required by §259.257 of this division.

(b) A bid obtained in accordance with subsection (a) of this section must include:

(1) the total cost of the requested adaptive aid, which may be from a catalog, website, or brochure price list;

(2) the amount of any additional expenses related to the delivery of the adaptive aid, including shipping and handling, taxes, installation, and other labor charges;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor, who may not be a relative of the individual;

(5) for an adaptive aid other than interpreter service and specialized training for augmentative communication programs, a complete description of the adaptive aid and any associated items or modifications as identified in the completed HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, which may include pictures or other descriptive information from a catalog, website, or brochure; and

(6) for interpreter service and specialized training for augmentative communication programs, the number of hours of the service or training to be provided in person and the hourly rate of the service.

(c) A DSA may obtain only one bid or two comparable bids for an adaptive aid if the DSA has written justification for obtaining less than three bids because the adaptive aid is available from a limited number of vendors.

(d) If a DSA requests to purchase an adaptive aid that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. The following are examples of justifications that support payment of a higher bid:

(1) the higher bid is based on the inclusion of a longer warranty for the adaptive aid; and

(2) the higher bid is from a vendor that is more accessible to the individual than another vendor.

(e) If the requested adaptive aid is a vehicle modification, a DSA must obtain proof that the individual or individual's family member owns the vehicle for which the vehicle modification is requested.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§259.263. Time Frames for Providing Adaptive Aids to Individuals.

(a) Except as provided for a medical supply described in subsection (c) of this section, for an adaptive aid costing less than \$500 and authorized by HHSC, a DSA must ensure that an individual receives the adaptive aid no later than 14 business days after one of the following dates, whichever is later:

(1) the date HHSC approves the individual's proposed IPC that includes the recommended adaptive aid; or

(2) the effective date of the individual's proposed IPC as determined by the service planning team.

(b) Except as provided for a medical supply as described in subsection (c) of this section, for an adaptive aid costing \$500 or more and authorized by HHSC, a DSA must ensure that an individual receives the adaptive aid no later than 30 business days after one of the following dates, whichever is later:

(1) the date HHSC approves the individual's proposed IPC that includes the recommended adaptive aid; or

(2) the effective date of the individual's proposed IPC as determined by the service planning team.

(c) For an adaptive aid that is a medical supply, as listed in the *Community Living Assistance and Support Services Provider Manual*, a DSA must ensure that an individual receives the medical supply as follows:

(1) for a medical supply that is not immediately needed by the individual, no later than five business days after one of the following dates, whichever is later:

(A) the date HHSC approves the individual's proposed IPC that includes the recommended adaptive aid; or

(B) the effective date of the individual's proposed IPC as determined by the service planning team; and

(2) for a medical supply that is immediately needed by the individual, no later than two business days after the date HHSC approves the individual's proposed IPC that includes the recommended adaptive aid.

(d) If a DSA cannot provide an adaptive aid in the time frame described in subsections (a), (b), or (c)(1) of this section, the DSA must comply with this subsection.

(1) Other than for a medical supply, for an adaptive aid costing less than \$500, the DSA must notify the individual and the individual's case manager, orally or in writing, before the 14-day time frame described in subsection (a) of this section expires:

(A) that the adaptive aid will not be provided within the 14-day time frame; and

(B) of a new proposed date for provision of the adaptive aid.

(2) Other than for a medical supply, for an adaptive aid costing \$500 or more, the DSA must notify the individual and the individual's case manager, orally or in writing, before the 30-day time frame described in subsection (b) of this section expires:

(A) that the adaptive aid will not be provided within the 30-day time frame; and

(B) of a new proposed date for provision of the adaptive aid.

(3) For an adaptive aid that is a medical supply and not immediately needed by the individual, the DSA must notify the individual and the individual's case manager, orally or in writing, before the five-day time frame described in subsection (c)(1) of this section expires:

(A) that the adaptive aid will not be provided within the five-day time frame;

(B) the reasons why the medical supply will not be provided within the five-day time frame; and

(C) of a new proposed date for provision of the medical supply.

§259.265. Cost Effective Delivery of Adaptive Aid.

(a) A DSA must ensure that if an adaptive aid is delivered to an individual by a commercial carrier, such as United Parcel Services or the United States Postal Service, the most cost-effective carrier is used.

(b) A DSA may not use a commercial carrier to provide overnight delivery unless it is necessary to meet the time frame for a medical supply immediately needed by the individual, as described in §259.263(c)(2) of this division (relating to Time Frames for Providing Adaptive Aids to Individuals), and there is no other more cost-effective means to deliver the adaptive aid within that time frame.

§259.267. Requirements of DSA Following Provision of Adaptive Aid.

(a) No later than 10 business days after an individual has received an adaptive aid, a DSA must ensure that:

(1) the adaptive aid meets the specifications required by §259.257(e)(1) of this division (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More); and

(2) a staff person involved in purchasing the adaptive aid for the individual:

(A) contacts the individual to determine whether the adaptive aid meets the needs of the individual; and

(B) documents the results of that contact on the HHSC Documentation of Completion of Purchase form described in the *Community Living Assistance and Support Services Provider Manual*.

(b) If the DSA determines that the adaptive aid does not meet the specifications required by §259.257(e)(1) of this division, the DSA must work with the vendor to ensure that the adaptive aid meets the specifications no later than 30 calendar days after the DSA's determination.

(c) If the staff person or individual or LAR determines that the adaptive aid does not adequately meet the individual's needs because the individual needs training or other assistance, or the adaptive aid requires repair or adjustment, the DSA must ensure that, no later than 14 business days after the determination, a person who is qualified to perform such training, assistance, repair, or adjustment visits the individual in person and performs the necessary functions.

(d) If the individual or LAR has concerns about the adaptive aid that are not addressed by the DSA's compliance with subsections (b) and (c) of this section, the DSA must process the individual's or LAR's concerns as a complaint in accordance with 40 TAC §49.309 (relating to Complaint Process).

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Karen Ray

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For further information, please call: (512) 438-5077



DIVISION 2. MINOR HOME MODIFICATIONS

26 TAC §§259.271, 259.273, 259.275, 259.277, 259.279, 259.281, 259.283, 259.285, 259.287

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.

§259.271. Items or Services Purchasable as a Minor Home Modification.

(a) The only items or services that a DSA may purchase as a minor home modification are listed in the *Community Living Assistance and Support Services Provider Manual*. Except as provided by §259.285(c) of this division (relating to Repair or Replacement of Minor Home Modification), the repair and maintenance of a minor home modification purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete and that are not covered by a warranty are also purchasable as a minor home modification.

(b) A DSA may not purchase, as a minor home modification, an item or service not listed in the *Community Living Assistance and Support Services Provider Manual*.

(c) The following are examples of items and services that may not be purchased as a minor home modification:

(1) general repair or maintenance of a residence (for example, repairing a leaking roof, a rotten porch, or termite damage; removing mold; or leveling a floor);

(2) general remodeling of a residence that does not address an individual's specific needs; and

(3) an adaptation that adds square footage to a residence.

§259.273. Authorization Limit for Minor Home Modifications and Amount for Repair and Maintenance.

(a) Except as provided in subsection (b) of this section, the maximum amount HHSC approves as payment to a DSA for all minor home modifications provided to an individual is \$10,000 during the time period the individual is enrolled in the CLASS Program.

(b) After reaching the \$10,000 authorization limit described in subsection (a) of this section, HHSC may approve up to \$300 per IPC period for repair and maintenance of minor home modifications purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete.

(c) To request authorization for repair and maintenance of a minor home modification described in subsection (b) of this section, a DSA is not required to follow the process set forth in §259.275 of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification) but must include the amount requested on an individual's IPC, as described in §259.65 of this chapter (relating to Development of an Enrollment IPC) or §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(d) A DSA must follow the process for requesting authorization to purchase a minor home modification described in §259.275 of this division if:

(1) requesting authorization for repair and maintenance of a minor home modification in an amount that exceeds \$300; or

(2) requesting authorization for repair and maintenance of a minor home modification that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as a minor home modification listed in the *Community Living Assistance and Support Services Provider Manual*.

(e) A request described under subsection (d) of this section and authorized by HHSC is counted toward the authorization limit described in subsection (a) of this section.

§259.275. Requirements for Authorization to Purchase a Minor Home Modification.

(a) To purchase a minor home modification for an individual a CMA must:

(1) ensure that the individual or LAR initiates a request for the minor home modification by completing Part A of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form described in the *Community Living Assistance and Support Services Provider Manual*;

(2) send the partially completed form to the DSA;

(3) ensure that the individual's service planning team includes the cost of the specifications for the requested minor home modification, as described in §259.277 of this division (relating to Requirements for Specifications for a Minor Home Modification), not to exceed \$200, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(4) no later than 14 calendar days after completing the requirement described in paragraph (3) of this subsection, submit to HHSC:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, described in paragraph (3)(A) of this subsection, as applicable; and

(B) the individual's IPP described in paragraph (3)(B) of this subsection.

(b) HHSC reviews the documentation described in subsection (a)(4) of this section and determines whether the proposed IPC is authorized in accordance with §259.69 of this chapter (relating to HHSC's Review of a Proposed Enrollment IPC) or §259.79 of this chapter (relating to Renewal and Revision of an IPC).

(c) HHSC notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. HHSC notifies a CMA, in writing, of whether the proposed IPC is authorized.

(d) If HHSC approves the proposed IPC for payment of the specifications, the DSA must:

(1) no later than 30 calendar days after the date HHSC approves the IPC, obtain the specifications regarding the minor home modification in accordance with §259.277 of this division and ensure that Part B of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form is completed;

(2) no later than 60 calendar days after obtaining the specifications:

(A) if the minor home modification costs more than \$1,000, obtain bids from vendors in accordance with §259.279 of this division (relating to Bid Requirements for a Minor Home Modification);

(B) select a vendor to complete construction of the minor home modification; and

(C) complete Part C of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form and send the form to the CMA; and

(3) before construction of the minor home modification:

(A) obtain written approval for construction of the modification from the owner of the property in question, unless such approval is granted in an applicable lease agreement; and

(B) ensure that the selected vendor obtains any required building permits.

(e) A CMA must, no later than 14 calendar days after receipt of the form described in subsection (d)(2)(C) of this section:

(1) complete Part D of the HHSC Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, evidencing that the criteria described in §259.65(b) of this chapter (relating to Development of an Enrollment IPC) are met;

(2) ensure that the individual's service planning team includes the cost of the minor home modification and the cost of the inspection of the minor home modification, not to exceed \$150, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) no later than 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to HHSC:

(A) the completed HHSC Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC described in paragraph (2)(A) of this subsection, as applicable;

(C) the individual's IPP described in paragraph (2)(B) of this subsection; and

(D) documentation regarding bids as required by §259.279 of this division.

(f) HHSC reviews the documentation described in subsection (e)(3) of this section and determines whether the proposed IPC is authorized in accordance with §259.69 or §259.79 of this chapter.

(g) HHSC notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. HHSC notifies a CMA, in writing, of whether the proposed IPC is authorized.

(h) The DSA must direct the vendor to begin construction of the minor home modification no later than seven calendar days after one of the following, whichever is later:

(1) the date HHSC approves the individual's proposed IPC;
or

(2) the effective date of the individual's proposed IPC as determined by the service planning team.

(i) A DSA must, no later than seven business days after it receives information that the minor home modification is completed, conduct an in-person inspection of the minor home modification in accordance with §259.281 of this division (relating to Inspection of a Minor Home Modification).

§259.277. Requirements for Specifications for a Minor Home Modification.

(a) If HHSC approves payment for specifications for a minor home modification in accordance with §259.275(b) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification), a DSA must:

(1) obtain specifications from a person who has experience in constructing home modifications; and

(2) ensure that the specifications:

(A) include a complete description of the minor home modification and any associated installations identified in the specifications;

(B) include a drawing or picture of both the existing room, structure, or other area and the proposed modification made to scale;

(C) comply with the Texas Accessibility Standards promulgated by the Texas Department of Licensing and Regulation unless:

(i) the DSA determines that it is not structurally feasible to do so and the DSA documents, in writing, the basis for its determination; or

(ii) the individual or LAR requests, in writing, that the specifications not be in compliance with the Texas Accessibility Standards; and

(D) are approved, in writing, by each member of the service planning team by completing the HHSC Specifications for Adaptive Aids/Minor Home Modifications form described in the Community Living Assistance and Support Services Provider Manual.

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

§259.279. Bid Requirements for a Minor Home Modification.

(a) As required by §259.275(d)(2)(A) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification), for a minor home modification costing more than \$1,000, a DSA must obtain comparable bids for the minor home modification from three vendors. Comparable bids describe the minor home modification and any associated installations identified in the specifications required by §259.275(d)(1) of this division.

(b) A bid obtained in accordance with subsection (a) of this section must be based on the specifications and include:

(1) an itemized list of materials and labor necessary to construct the modification;

(2) the cost of each material and labor listed;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor;

(5) a detailed explanation of the vendor's warranty for the modification, if any; and

(6) a statement that the minor home modification will be made in accordance with all applicable state and local building codes.

(c) A DSA may obtain only one bid or two comparable bids for a minor home modification if the DSA has written justification for obtaining less than three bids because the minor home modification is available from a limited number of vendors.

(d) If a DSA requests to purchase a minor home modification that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. An example of a justification that

supports payment of a higher bid is that the higher bid is based on the inclusion of a longer warranty for the minor home modification.

(e) The person who developed the specifications required by §259.275(d)(1) of this division may be one of the bidders required by this section.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§259.281. Inspection of a Minor Home Modification.

(a) A DSA must conduct an in-person inspection of the minor home modification to determine if:

(1) the minor home modification has been completed;

(2) the minor home modification has been made in accordance with the specifications required by §259.275(d)(1) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification); and

(3) the quality of workmanship of the minor home modification is adequate.

(b) An inspection required by subsection (a) of this section may be performed by the person who developed the specifications unless that person is affiliated with the vendor who completed the minor home modification.

(c) A DSA must obtain an invoice from the person who conducted the inspection, substantiating the cost of the inspection.

(d) If, based on the inspection, the DSA determines that the minor home modification meets the conditions listed in subsection (a) of this section, the DSA must send a completed HHSC Documentation of Completion of Purchase form described in the *Community Living Assistance and Support Services Provider Manual* to the individual's CMA no later than seven business days after completion of the inspection.

(e) If, based on the inspection, a DSA determines that the minor home modification does not meet the conditions listed in subsection (a) of this section, the DSA must ensure that the vendor meets the conditions no later than 30 calendar days after the DSA's determination.

(f) A DSA may not submit a claim for payment of the minor home modification until the DSA determines that the minor home modification meets the conditions listed in subsection (a) of this section.

§259.283. Time Frames for Completion of Minor Home Modification.

(a) A DSA must ensure that a minor home modification is completed no later than 60 calendar days after one of the following dates, whichever is later:

(1) the date HHSC approves the proposed IPC that includes the cost of the minor home modification and inspection, as described in §259.275(e)(2) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification); or

(2) the effective date of the proposed IPC as determined by the service planning team.

(b) If a DSA determines that the minor home modification will not be completed within the time frame required by subsection (a) of this section, the DSA must notify the individual or LAR, and the case manager, in writing, of a new proposed date of completion. The proposed date of completion may not exceed 30 calendar days after the date required by subsection (a) of this section.

§259.285. Repair or Replacement of Minor Home Modification.

(a) The repair or replacement of a minor home modification needed within one year after the date the minor home modification is complete is not purchasable as a minor home modification.

(b) If a minor home modification requires repair or replacement within one year after the date of completion, the DSA must repair or replace the minor home modification at its own expense, except as provided in subsection (c) of this section.

(c) If a minor home modification requires repair or replacement because the minor home modification was intentionally damaged, the repair or replacement must be done at the expense of the individual or LAR.

§259.287. Satisfaction of Minor Home Modification.

(a) A DSA must ensure that a staff person involved in purchasing the minor home modification for the individual:

(1) visits the individual to determine whether the individual and LAR is satisfied with the minor home modification; and

(2) documents the result of that visit on an HHSC Documentation of Completion of Purchase form described in *Community Living Assistance and Support Services Provider Manual*.

(b) If the individual or LAR is not satisfied with the minor home modification, the DSA must process the individual's or LAR's dissatisfaction as a complaint in accordance with 40 TAC §49.309 (relating to Complaint Process).

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5077



DIVISION 3. CFC ERS

26 TAC §259.289

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 section affects Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§259.289. CFC ERS.

(a) Eligibility for CFC ERS. A DSA must ensure that CFC ERS is provided only to an individual:

(1) who is not receiving support family services or continued family services; and

(2) who:

(A) lives alone, who is alone for significant parts of the day, or has no regular caregiver for extended periods of time; and

(B) would otherwise require extensive routine supervision.

(b) Installing equipment.

(1) A DSA must ensure that CFC ERS equipment is installed no later than 14 business days after one of the following dates, whichever is later:

(A) the date HHSC approves the proposed IPC that includes CFC ERS; or

(B) the effective date of the individual's IPC as determined by the service planning team.

(2) At the time CFC ERS equipment is installed, a DSA must ensure that:

(A) the equipment is installed in accordance with the manufacturer's installation instructions;

(B) an initial test of the equipment is made;

(C) the equipment has an alternate power source in the event of a power failure;

(D) the individual is trained on the use of the equipment, including:

(i) demonstrating how the equipment works; and

(ii) having the individual activate an alarm call;

(E) an explanation is given to the individual that the individual must:

(i) participate in a system check each month; and

(ii) contact the CFC ERS provider if:

(I) the individual's telephone number or address changes; or

(II) one or more of the individual's responders change; and

(F) the individual is informed that a responder, in response to an alarm call, may forcibly enter the individual's home if necessary.

(3) A DSA must ensure that the date and time of the CFC ERS equipment installation and compliance with the requirements in paragraphs (1) and (2) of this subsection are documented in the individual's record.

(c) Securing responders. A DSA must ensure that, on or before the date CFC ERS equipment is installed:

(1) an attempt is made to obtain from an individual, the names and telephone numbers of at least two responders, such as a relative or neighbor;

(2) public emergency personnel:

(A) is designated as a second responder if the individual provides the name of only one responder; or

(B) is designated as the sole responder if the individual does not provide the names of any responders; and

(3) the name and telephone number of each responder is documented in the individual's record.

(d) Conducting a system check.

(1) At least once during each calendar month a DSA must ensure that a system check is conducted on a date and time agreed to by an individual.

(2) A DSA must ensure that the date, time, and result of the system check is documented in the individual's record.

(3) If, as a result of the system check:

(A) the equipment is working properly but the individual is unable to successfully activate an alarm call, the DSA must ensure that a request is made of the case manager to convene a service planning team meeting to determine if CFC ERS meets the individual's needs; or

(B) the equipment is not working properly, the DSA must ensure that, no later than three calendar days after the date of the system check, the equipment is repaired or replaced.

(e) Failing to complete a system check. If a system check is not conducted in accordance with subsection (d)(1) of this section, a DSA must ensure that:

(1) the failure to comply is because of good cause; and

(2) the good cause is documented in an individual's record.

(f) Alarm call.

(1) A DSA must ensure that an alarm call is responded to 24 hours a day, seven days a week.

(2) A DSA must ensure that, if an alarm call is made, a CFC ERS provider:

(A) within 60 seconds of the alarm call, attempts to contact an individual to determine if an emergency exists;

(B) immediately contacts a responder, if as a result of attempting to contact the individual:

(i) the CFC ERS provider confirms there is an emergency; or

(ii) the CFC ERS provider is unable to communicate with the individual; and

(C) documents the following information in the individual's record when the information becomes available:

(i) the name of the individual;

(ii) the date and time of the alarm call, recorded in hours, minutes, and seconds;

(iii) the response time, recorded in seconds;

(iv) the time the individual is called in response to the alarm call, recorded in hours, minutes, and seconds;

(v) the name of the contacted responder, if applicable;

(vi) a brief description of the reason for the alarm call; and

(vii) if the reason for the alarm call is an emergency, a statement of how the emergency was resolved.

(3) If an alarm call results in a responder being dispatched to an individual's home for an emergency, the DSA must ensure that:

(A) the case manager receives written notice of the alarm call within one business day after the date of the alarm call;

(B) if the CFC ERS provider is a contracted provider, the DSA receives written notice from the contracted provider within one business day after the alarm call; and

(C) the written notices required by subparagraphs (A) and (B) of this paragraph are maintained in the individual's record.

(g) Equipment failure.

(1) A DSA must ensure that, if an equipment failure occurs, other than during a system check required by subsection (d)(1) of this section:

(A) the individual is informed of the equipment failure;
and

(B) the equipment is replaced within one business day after the failure becomes known by the CFC ERS provider.

(2) If an individual is not informed of the equipment failure or the equipment is not replaced in compliance with paragraph (1) of this subsection, a DSA must:

(A) determine whether the failure to inform the individual or replace the equipment was because of good cause; and

(B) as soon as possible, ensure that the individual is informed of the equipment failure and the equipment is replaced.

(h) Low battery.

(1) A DSA must ensure that, if the ERS equipment registers five or more "low battery" signals in a 72-hour period:

(A) a visit to an individual's home is made to conduct a system check no later than five business days after the low battery signals occur; and

(B) if the battery is defective, the battery is replaced during the visit.

(2) If a system check or battery replacement is not made in accordance with paragraph (1) of this subsection, a DSA must:

(A) determine whether the failure to conduct a system check or replace a defective battery was because of good cause; and

(B) as soon as possible, conduct a system check and replace a defective battery.

(i) Documenting equipment failure or low battery. A DSA must ensure that the following information is documented in an individual's record:

(1) the date the equipment failure or low battery signal became known by the CFC ERS provider;

(2) the equipment or subscriber number;

(3) a description of the problem;

(4) the date the equipment or battery was repaired or replaced; and

(5) the good cause for failure to comply with subsections (g)(2)(A) and (h)(2)(A) 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.

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Karen Ray
Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5077

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SUBCHAPTER G. ADDITIONAL CMA
REQUIREMENTS

**26 TAC §§259.301, 259.303, 259.305, 259.307, 259.309,
259.311, 259.313, 259.315, 259.317, 259.319, 259.321**

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.

§259.301. CMA: Compliance with Rules.

A CMA must comply with:

(1) this chapter;

(2) 40 TAC Chapter 49 (relating to Contracting for Community Services); and

(3) 40 TAC Chapter 41 (relating to Consumer Directed Services Option).

§259.303. Protection of an Individual.

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with a staff person, volunteer, or controlling person of the CMA;

(3) abuse, neglect, and exploitation;

(4) acts of financial impropriety by a staff person, volunteer, or controlling person of the CMA; and

(5) deliberate damage of personal possessions by a staff person, volunteer, or controlling person of the CMA.

(b) A CMA must report a critical incident to HHSC and the DSA in accordance with the Appendix XIII of the Community Living Assistance and Support Services Provider Manual using the HHSC CLASS/DBMD Notification of Critical Incidents form.

(c) A CMA program director who receives a copy of an HHSC initial intake report or a final investigative report from an FMSA in accordance with 40 TAC §41.702 (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Service Provider) or 40 TAC §41.703 (relating to Requirements Related to HHSC Investigations When an Alleged Perpetrator is a Staff Person or a Controlling Person of an FMSA) must give a copy of the report to the individual's case manager.

§259.305. DSA Services Outside the Catchment Area.

(a) If a CMA is notified by the DSA in accordance with §259.359(g)(2) of this chapter (relating to DSA: Service Delivery)

that an individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area in which the individual resides, the CMA must:

(1) provide an oral explanation to the individual or LAR, on or before the 35th day of the period services have been provided outside the catchment area, that:

(A) the individual must do one of the following before the 61st day of the period services have been provided outside the catchment area to ensure the continued provision of transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB:

(i) transfer to a DSA contract for the catchment area in which the individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB; or

(ii) return to the catchment area in which the individual resides; and

(B) if the individual receives transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area during a period of 60 consecutive days, the individual must return to the catchment area in which the individual resides and receive services in that catchment area before the DSA may accept another request from the individual or LAR that the DSA provide transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB outside the catchment area;

(2) document that the CMA provided the oral explanation required by paragraph (1) of this subsection; and

(3) if the individual or LAR expresses a desire for the individual to transfer to a DSA contract for the catchment area in which the individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB:

(A) give the individual and LAR or actively involved person a written list of CMAs and DSAs serving the catchment area in which the individual is receiving transportation as a habilitation activity, out-of-home respite in a camp, adaptive aids, nursing, or CFC PAS/HAB;

(B) have the individual or LAR select a CMA and DSA by completing an HHSC Selection Determination form, as described in the Community Living Assistance and Support Services Provider Manual; and

(C) coordinate the individual's transfer in accordance with §259.151 of this chapter (relating to Coordination of Transfers).

(b) If an individual requests that the case manager convene a meeting of the service planning team to discuss the DSA's reasons for declining a request to allow services to be provided outside the catchment area, as described in §259.359(h)(1)(B) of this chapter, the case manager must:

(1) convene a meeting to review the reasons the DSA declined the request to allow services outside the catchment area;

(2) facilitate a discussion between the individual or LAR and the DSA during the meeting regarding the reasons the DSA declined the request; and

(3) document the results of the meeting.

§259.307. *Qualifications of CMA Staff Persons.*

(a) A CMA must have a full-time or part-time program director who:

(1) manages and oversees the CMA's operations, including the provision of case management services to individuals enrolled with the CMA;

(2) is at least 18 years of age;

(3) has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; and

(4) is an employee of the CMA.

(b) A CMA must ensure that a case manager working for the CMA:

(1) has:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is an employee of the CMA;

(3) is not employed by or contracting with a DSA to provide a direct service to an individual served by the CMA; and

(4) is not a relative of the individual to whom the case manager is providing case management.

§259.309. *Training of CMA Staff Persons and Volunteers.*

(a) A CMA must ensure that:

(1) a CMA staff person completes training as described in the Community Living Assistance and Support Services Provider Manual;

(2) a CMA staff person completes training on the CLASS Program and CFC, including the requirements of this chapter and the CLASS Program services and CFC services described in §259.7 of this chapter (relating to Description of the CLASS Program and CFC Option); and

(3) a case manager completes a comprehensive non-introductory person-centered service planning training developed or approved by HHSC within six months after the case manager's date of hire.

(b) A CMA must:

(1) ensure that each CMA staff person and volunteer:
(A) is trained on and knowledgeable of:
(i) acts that constitute abuse, neglect, and exploitation;
(ii) signs and symptoms of abuse, neglect, and exploitation; and
(iii) methods to prevent abuse, neglect, and exploitation;
(B) is instructed to report to DFPS immediately, but not later than 24 hours, after having knowledge or suspicion that an individual has been or is being abused, neglected, or exploited, by:

(i) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-252-5400; or

(ii) using the DFPS Abuse Hotline website; and

(C) is provided with the instructions described in subparagraph (B) of this paragraph in writing;

(2) conduct the activities described in paragraph (1)(A) - (C) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the CMA staff person or volunteer was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the CMA staff person or volunteer is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted; and

(C) the name of the person or organization who conducted the training.

§259.311. CMA Service Delivery.

(a) A CMA must ensure that:

(1) a full-time case manager is assigned to provide case management to no more than 50 individuals at one time;

(2) a part-time case manager is assigned to provide case management to no more than 25 individuals at one time; and

(3) for a month in which a case manager does not meet with an individual or LAR as required by §259.79(a) of this chapter (relating to Renewal and Revision of an IPC), the case manager has an in-person or telephone contact with the individual or LAR or other persons acting on behalf of the individual, such as an advocate or family member, to provide case management.

(b) In determining the number of individuals to which a case manager will be assigned, a CMA must consider:

(1) the intensity of an individual's needs;

(2) the frequency and duration of contacts the case manager will need to make with the individual; and

(3) the amount of travel time involved in making such contacts.

(c) A CMA must have:

(1) an adequate number of case managers available to ensure the provision of case management to an individual at all times; and

(2) a written process that ensures that case managers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide case management.

(d) A CMA must ensure that a case manager participates as a member of an individual's service planning team and uses the person-centered planning process when developing or revising required documentation in accordance with this chapter and the Community Living Assistance and Support Services Provider Manual.

(e) A CMA must ensure that case management is provided to an individual in accordance with the individual's IPC.

(f) A CMA must submit an IPC to HHSC within the time periods required by §259.65 of this chapter (relating to Development of an Enrollment IPC) and §259.79(g)(2)(A) and (g)(3)(A) of this chapter to ensure that a DSA receives reimbursement for the provision of CLASS Program services and CFC services.

(g) A CMA must follow the process for requesting authorization to purchase dental treatment, as described in the Community Living Assistance and Support Services Provider Manual.

(h) If an individual may need cognitive rehabilitation therapy, a case manager must assist the individual in obtaining, in accordance with the Medicaid State Plan, a neurobehavioral or neuropsychological assessment and plan of care from a qualified professional as a non-CLASS Program service.

§259.313. CMA: Documentation of Services Delivered and Record-keeping.

(a) A CMA must ensure that when a case manager provides case management, the case manager:

(1) documents:

(A) the date of contact;

(B) a description of the case management activity performed;

(C) the progress or lack of progress in achieving goals or outcomes in the individual's IPP in observable, measurable terms that directly relate to the specific goal or outcomes addressed;

(D) the person with whom the contact occurred; and

(E) the signature and title of the case manager who provided the contact; and

(2) completes an HHSC Documentation of Services Delivered form to document the provision of case management that is supported by the documentation required in paragraph (1) of this subsection.

(b) A CMA must ensure that, after a case manager makes the last entry on an HHSC Documentation of Services Delivered form, a staff person other than the case manager who completed the form signs and dates the form as a timekeeper as verification of the accuracy of the information on the form.

(c) A CMA must maintain a separate record for each individual receiving case management from the CMA. An individual's record must include:

(1) the individual's current IPC and any other IPC authorized for the current IPC period;

(2) the individual's current IPP and any other IPP developed for the current IPC period;

(3) the individual's current HHSC IPP Addendum and any other HHSC IPP Addendum developed for the current IPC period;

(4) the individual's current ID/RC Assessment;

(5) the individual's current HHSC CLASS/DBMD Nursing Assessment form;

(6) the individual's HHSC Waiver Program Verification of Freedom of Choice form completed at enrollment documenting the individual's or LAR's choice of the CLASS Program over the ICF/IID Program;

(7) the individual's current HHSC Selection Determination form documenting the individual's or LAR's choice of a CMA and DSA;

(8) the documentation required by subsection (a)(1) of this section;

(9) the completed HHSC Documentation of Services Delivered forms signed and dated by a timekeeper as required by subsection (b) of this section; and

(10) any other relevant documentation concerning the individual.

§259.315. CMA: Quality Management Process.

(a) A CMA must, at least annually, conduct a survey of all individuals, LARs, and actively involved persons to determine their satisfaction with the provision of case management.

(b) A CMA must develop a written quality assurance process to evaluate and improve the quality of case management provided by the CMA based, at least in part, on the results of the survey required by subsection (a) of this section.

(c) At least annually, a CMA must:

(1) review all final investigative reports from HHSC for an investigation described in §259.319(c) of this subchapter (relating to CMA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual) and, based on the review, identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation and improve the delivery of case management services; and

(2) evaluate critical incident data reported in accordance with §259.303(h) of this subchapter (relating to Protection of Individual) and identify program process improvements that help prevent the occurrence of critical incidents and improve service delivery.

§259.317. CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a CMA, staff person, volunteer, or controlling person of the CMA knows or suspects an individual is being or has been abused, neglected, or exploited, the CMA must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to DFPS immediately, but not later than 24 hours after having knowledge or suspicion, by:

(1) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-252-5400; or

(2) using the DFPS Abuse Hotline website.

§259.319. CMA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.

(a) If a report required by §259.317 of this subchapter (relating to CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual) alleges abuse, neglect, or exploitation by a person who

is not a staff person, volunteer, or controlling person of a CMA, the CMA must:

(1) as necessary:

(A) obtain immediate medical or psychological services for the individual; and

(B) assist in obtaining ongoing medical or psychological services for the individual;

(2) discuss with the individual or LAR alternative residential settings and additional services that may help ensure the individual's safety;

(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual; and

(4) preserve and protect evidence related to the allegation.

(b) If a report required by §259.317 of this subchapter alleges abuse, neglect, or exploitation of an individual by a staff person, volunteer, or controlling person of a CMA; or if the CMA is notified by HHSC of an allegation of abuse, neglect, or exploitation by a staff person, volunteer, or controlling person of the CMA, the CMA must:

(1) as necessary:

(A) obtain immediate medical or psychological services for the individual; and

(B) assist in obtaining ongoing medical or psychological services for the individual;

(2) take actions to secure the safety of the individual, including if necessary, ensuring that the alleged perpetrator of the abuse, neglect, or exploitation does not have contact with the individual or any other individual until HHSC completes the investigation;

(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual;

(4) preserve and protect evidence related to the allegation; and

(5) as soon as possible, but no later than 24 hours, after the CMA reports or is notified of the allegation, notify the individual, the LAR, and the DSA of:

(A) the allegation report; and

(B) the actions the CMA has taken or will take based on the allegation, the condition of the individual, and the nature and severity of any harm to the individual, including the actions required by paragraph (2) of this subsection.

(c) During an HHSC investigation of an alleged perpetrator who is a staff person, volunteer, or controlling person of a CMA, the CMA must:

(1) cooperate with the investigation as requested by HHSC, including providing documentation and participating in an interview;

(2) provide HHSC access to:

(A) sites owned, operated, or controlled by the CMA;

(B) individuals, staff persons, volunteers, and controlling persons; and

(C) records pertinent to the investigation of the allegation; and

(3) ensure that staff persons, volunteers, and controlling persons of the CMA comply with paragraphs (1) and (2) of this subsection.

(d) After a CMA receives a final investigative report from HHSC for an investigation described in subsection (c) of this section, the CMA must:

(1) if the allegation of abuse, neglect, or exploitation is confirmed by HHSC:

(A) review the report, including any concerns and recommendations by HHSC; and

(B) take action within the CMA's authority to prevent the reoccurrence of abuse, neglect or exploitation, including disciplinary action against a staff person or volunteer of the CMA confirmed to have committed abuse, neglect, or exploitation;

(2) if the allegation of abuse, neglect, or exploitation is unconfirmed, inconclusive, or unfounded:

(A) review the report, including any concerns and recommendations by HHSC; and

(B) take appropriate action within the CMA's authority, as necessary; and

(3) immediately, but not later than five calendar days after the date the CMA receives the HHSC final investigative report, notify the individual and the LAR of:

(A) the investigation finding; and

(B) the action taken by the CMA in response to the HHSC investigation as required by paragraphs (1) and (2) of this subsection.

(e) A CMA must not retaliate against:

(1) a staff person, an individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:

(A) the use of seclusion; and

(B) the use of a restraint not in compliance with federal and state laws, rules, and regulations; and

(2) an individual because a person on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:

(A) the use of seclusion; and

(B) the use of a restraint not in compliance with federal and state laws, rules, and regulations.

§259.321. CMA: Requirement for Translation.

If a CMA submits documentation to HHSC in accordance with this chapter containing information that is not in English, the CMA must, at the same time, submit a translation of the information in English.

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

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SUBCHAPTER H. ADDITIONAL DSA
REQUIREMENTS

26 TAC §§259.351, 259.353, 259.355, 259.357, 259.359, 259.360, 259.361, 259.363, 259.365, 259.367, 259.369, 259.371, 259.373

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.

§259.351. DSA: Compliance with Rules.

A DSA must comply with:

(1) this chapter;

(2) 26 TAC Chapter 558 (relating to Licensing Standards for Home and Community Support Services Agencies);

(3) 40 TAC Chapter 49 (relating to Contracting for Community Services); and

(4) 1 TAC Chapter 354, Subchapter O (relating to Electronic Visit Verification).

§259.353. DSA: Protection of an Individual.

(a) A DSA must have and implement written policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with a service provider, staff person, volunteer, or controlling person of the DSA;

(3) acts of financial impropriety by a service provider, staff person, volunteer, or controlling person of the DSA;

(4) abuse, neglect, and exploitation; and

(5) deliberate damage of personal possessions by a service provider, staff person, volunteer, or controlling person of the DSA.

(b) A DSA, in accordance with the Community Living Assistance and Support Services Provider Manual, must report critical incidents to HHSC and the CMA using the HHSC CLASS/DBMD Notification of Critical Incidents form.

§259.355. Qualifications of DSA Staff Persons.

(a) A DSA must ensure that a staff person meets the requirements of this section.

(b) A service provider for a direct service must meet the qualifications in this subsection and in subsection (d) of this section.

(1) A service provider for a direct service:

(A) must be at least 18 years of age; and

(B) except as provided by paragraphs (2) and (3) of this subsection, may not be a relative or guardian of the individual to whom the service provider is providing the direct service.

(2) A service provider of transportation as a habilitation activity, prevocational services, respite, employment assistance, supported employment, or CFC PAS/HAB may be a relative or guardian of the individual unless prohibited by subsection (d)(21) of this section.

(3) A service provider of minor home modifications may be a relative or guardian of the individual.

(c) A DSA must have a full-time or part-time program director who:

(1) manages and oversees the DSA's operations including the provision of CLASS Program services and CFC services to individuals enrolled with the DSA and has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is at least 18 years of age;

(3) is an employee of the DSA; and

(4) is not a relative of an individual being served by the DSA.

(d) A DSA must ensure that CLASS Program services and CFC services are provided by qualified service providers in accordance with this subsection.

(1) A service provider of registered nursing and of specialized registered nursing must be an RN.

(2) A service provider of licensed vocational nursing and of specialized licensed vocational nursing must be a licensed vocational nurse.

(3) A service provider of occupational therapy must be an occupational therapist or an occupational therapy assistant licensed in accordance with Texas Occupations Code Chapter 454.

(4) A service provider of physical therapy must be a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code Chapter 453.

(5) A service provider of speech and language pathology must be a speech-language pathologist or a licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code Chapter 401.

(6) A service provider of auditory integration training/auditory enhancement training must be an audiologist or a licensed assistant in audiology licensed in accordance with Texas Occupations Code Chapter 401.

(7) A service provider of dental treatment must be a person licensed to practice dentistry, dental surgery, or dental hygiene in accordance with Texas Occupations Code Chapter 256.

(8) A service provider of dietary services must be a dietitian licensed in accordance with Texas Occupations Code Chapter 701.

(9) A service provider of massage therapy must be a massage therapist licensed in accordance with Texas Occupations Code Chapter 455.

(10) A service provider of therapeutic horseback riding must be a person certified by the Professional Association of Therapeutic Horsemanship International as a therapeutic riding instructor.

(11) Hippotherapy must be provided by the following two service providers:

(A) a service provider who is certified by the Professional Association of Therapeutic Horsemanship International as a therapeutic riding instructor; and

(B) a service provider who is:

(i) an occupational therapist licensed in accordance with Texas Occupations Code Chapter 454;

(ii) an occupational therapy assistant licensed in accordance with Texas Occupations Code Chapter 454;

(iii) a physical therapist licensed in accordance with Texas Occupations Code Chapter 453; or

(iv) a physical therapist assistant licensed in accordance with Texas Occupations Code Chapter 453.

(12) A service provider of recreational therapy must be a person:

(A) who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; or

(B) who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc.

(13) A service provider of music therapy is a person who holds a credential as a board certified music therapist awarded by the Certification Board for Music Therapists.

(14) A service provider of aquatic therapy must:

(A) be:

(i) a massage therapist licensed in accordance with Texas Occupations Code Chapter 455;

(ii) a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; or

(iii) a person who is certified as a therapeutic recreation specialist by the Consortium for Therapeutic Recreation/Activities Certification, Inc.; and

(B) hold a certificate of completion of the "Basic Water Rescue" course from the American Red Cross or be certified by the American Red Cross as a lifeguard.

(15) A service provider of behavioral support must:

(A) be one of the following:

(i) a psychologist licensed in accordance with Texas Occupations Code Chapter 501;

(ii) a provisional license holder licensed in accordance with Texas Occupations Code Chapter 501;

(iii) a psychological associate licensed in accordance with Texas Occupations Code Chapter 501;

(iv) a clinical social worker licensed in accordance with Texas Occupations Code Chapter 505;

(v) a licensed professional counselor licensed in accordance with Texas Occupations Code Chapter 503; or

(vi) a behavior analyst certified by the Behavior Analyst Certification Board, Inc.; and

(B) have received training in behavioral support or have experience in providing behavioral support.

(16) A service provider of cognitive rehabilitation therapy must be:

(A) a psychologist licensed in accordance with Texas Occupations Code Chapter 501;

(B) a speech-language pathologist licensed in accordance with Texas Occupations Code Chapter 401; or

(C) an occupational therapist licensed in accordance with Texas Occupations Code Chapter 454.

(17) A service provider of prevocational services must have:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities.

(18) A service provider of employment assistance and a service provider of supported employment must have:

(A) a bachelor's degree in rehabilitation, business, marketing, or a related human services field with six months of paid or unpaid experience providing services to people with disabilities;

(B) an associate's degree in rehabilitation, business, marketing, or a related human services field with one year of paid or unpaid experience providing services to people with disabilities; or

(C) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, with two years of paid or unpaid experience providing services to people with disabilities.

(19) Documentation of the experience required by paragraph (18) of this subsection must include:

(A) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(B) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(20) A service provider of transportation as a habilitation activity or respite who is hired on or after July 1, 2015 must have:

(A) a high school diploma;

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

(C) both of the following:

(i) a successfully completed written competency-based assessment demonstrating the service provider's ability to assist with ADLs and IADLs required for the individual to whom the service provider will provide transportation as a habilitation activity or respite; and

(ii) at least three written personal references from persons who are not relatives of the service provider that evidence the service provider's ability to provide a safe and healthy environment for the individual.

(21) A service provider of transportation as a habilitation activity, prevocational services, respite, employment assistance, supported employment, or CFC PAS/HAB may not be:

(A) the parent of the individual if the individual is under 18 years of age; or

(B) the spouse of the individual.

(22) A service provider of support family services or continued family services must meet the requirements described in §259.215(a) of this chapter (relating to Support Family Requirements).

(23) A service provider of CFC PAS/HAB must:

(A) have:

(i) a high school diploma;

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

(iii) both of the following:

(I) a successfully completed written competency-based assessment demonstrating the service provider's ability to perform CFC PAS/HAB tasks, including an ability to perform CFC PAS/HAB tasks required for the individual to whom the service provider will provide CFC PAS/HAB; and

(II) at least three written personal references from persons not related by blood that evidence the service provider's ability to provide a safe and healthy environment for the individual; and

(B) meet any other qualifications requested by the individual or LAR based on the individual's needs and preferences.

(e) A DSA may not contract with or employ a service provider who is employed by or contracting with a CMA to provide case management to an individual served by the DSA.

(f) A DSA must ensure that a staff person who transports an individual in a vehicle has:

(1) a current Texas driver's license; and

(2) vehicle liability insurance in accordance with state law.

§259.357. Training of DSA Staff Persons, Service Providers, and Volunteers.

(a) A DSA must ensure that:

(1) a DSA staff person who has direct contact with an individual completes training described in the Community Living Assistance and Support Services Provider Manual; and

(2) a DSA staff person whose duties include participating as a member of a service planning team completes HHSC's web-based Introductory Training within six months after assuming this duty.

(b) A DSA must ensure that, before providing services to an individual:

(1) a service provider of transportation as a habilitation activity completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed tasks regarding habilitation;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the Community Living Assistance and Support Services Provider Manual, with training to occur in the individual's home with full participation from the individual, if possible; and

(2) a service provider of CFC PAS/HAB completes:

(A) two hours of orientation covering the following:

(i) an overview of related conditions; and

(ii) an explanation of commonly performed CFC PAS/HAB activities;

(B) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(C) training in the CFC PAS/HAB activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the Community Living Assistance and Support Services Provider Manual, with training to occur in the individual's home with full participation from the individual, if possible.

(c) A DSA must, if requested by an individual or LAR:

(1) allow the individual or LAR to train a CFC PAS/HAB service provider in the specific assistance needed by the individual and to have the service provider perform CFC PAS/HAB in a manner that comports with the individual's personal, cultural, or religious preferences; and

(2) ensure that a CFC PAS/HAB service provider attends training by HHSC so the service provider meets any additional qualifications desired by the individual or LAR.

(d) The supervisor of a service provider of transportation as a habilitation activity or CFC PAS/HAB must, in accordance with the Community Living Assistance and Support Services Provider Manual, evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

(e) A DSA must:

(1) ensure that each service provider, staff person, and volunteer of the DSA:

(A) is trained on and knowledgeable of:

(i) acts that constitute abuse, neglect, and exploitation of an individual;

(ii) signs and symptoms of abuse, neglect, and exploitation; and

(iii) methods to prevent abuse, neglect, and exploitation;

(B) is instructed to report to DFPS immediately, but not later than 24 hours, after having knowledge or suspicion that an individual has been or is being abused, neglected, or exploited, by:

(i) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-252-5400; or

(ii) using the DFPS Abuse Hotline website; and

(C) is provided with the instructions described in subparagraph (B) of this paragraph in writing;

(2) conduct the activities described in paragraph (1) of this subsection:

(A) within one year after the person's most recent training on abuse, neglect, and exploitation and annually thereafter, if the service provider, staff person, or volunteer of the DSA was hired before July 1, 2019; or

(B) before assuming job duties and annually thereafter, if the service provider, staff person, or volunteer of the DSA is hired on or after July 1, 2019; and

(3) document:

(A) the name of the person who received the training required by this subsection;

(B) the date the training was conducted or completed; and

(C) except for the training described in subsection (a)(2) of this section, the name of the person who conducted the training.

§259.359. DSA: Service Delivery.

(a) A DSA must ensure that:

(1) CLASS Program services and CFC services, other than CFC support management, are provided to an individual in accordance with:

(A) the individual's IPC;

(B) the individual's IPP for that service;

(C) the PAS/HAB plan, if applicable; and

(D) for CLASS Program services, Appendix C of the CLASS waiver application approved by CMS and available on the HHSC website;

(2) an adaptive aid, minor home modification, and CFC ERS meets the requirements described in Subchapter F of this chapter (relating to Adaptive Aids, Minor Home Modifications, and CFC ERS);

(3) transportation as a habilitation activity or as an adaptive aid is provided in accordance with the individual's individual transportation plan;

(4) if the individual obtains a plan of care as described in §259.311(h) of this chapter (relating to CMA Service Delivery), a qualified professional described in §259.355(d)(16) of this chapter (relating to Qualifications of DSA Staff Persons) provides and monitors the provision of cognitive rehabilitation therapy to the individual in accordance with the plan of care; and

(5) CFC support management is provided to an individual or LAR described in the Community Living Assistance and Support Services Provider Manual if:

(A) the individual is receiving CFC PAS/HAB; and

(B) the individual or LAR requests to receive CFC support management.

(b) A DSA must provide nursing, transportation as a habilitation activity, respite, an adaptive aid, dental treatment, or CFC PAS/HAB to an individual, even if not included on the individual's IPC, if an RN determines that the service is necessary to prevent the individual's health and safety from being placed in immediate jeopardy. If a DSA provides a service under this subsection, the DSA must submit documentation to the CMA as required by §259.81(a) of this chapter (relating to Revised IPC and Revised IPP for Services Provided to Prevent Immediate Jeopardy).

(c) A DSA must have a written process that ensures that staff persons are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide a CLASS Program service or CFC service.

(d) A DSA must ensure that a DSA staff person participates as a member of an individual's service planning team in accordance with this chapter and the Community Living Assistance and Support Services Provider Manual.

(e) A DSA must inform the individual's case manager of changes needed to the individual's IPC or IPPs.

(f) Except as provided in subsection (i) of this section, a DSA may accept or decline the request of an individual or LAR for the DSA to provide transportation as a habilitation activity, out-of-home respite in a camp described in §259.361(b)(2)(D) of this subchapter (relating to Respite and Dental Treatment), adaptive aids, nursing, or CFC PAS/HAB to the individual while the individual is temporarily staying at a location outside the catchment area in which the individual resides but within the state of Texas.

(g) If a DSA accepts the request of an individual or LAR, as described in subsection (f) of this section, the DSA:

(1) may provide transportation as a habilitation activity, out-of-home respite in a camp described in §259.361(b)(2)(D) of this subchapter, adaptive aids, nursing, or CFC PAS/HAB to the individual outside the catchment area during a period of no more than 60 consecutive days;

(2) must, no later than three business days after the DSA begins providing services outside the catchment area, notify the individual's case manager in writing of the following:

(A) that the individual is receiving services outside the catchment area in which the individual resides;

(B) the location where the individual is receiving the services;

(C) the estimated length of time the individual is expected to be outside the catchment area; and

(D) contact information for the individual or LAR; and

(3) must notify the individual's case manager in writing that the individual has returned to the catchment area in which the individual resides no later than three business days after becoming aware of the individual's return.

(h) If a DSA declines the request of an individual or LAR, as described in subsection (f) of this section, the DSA must:

(1) inform the individual or LAR:

(A) of the reasons for declining the request; and

(B) that the individual or LAR may request that the case manager convene a meeting of the service planning team to discuss the reasons for declining the request; and

(2) no later than three business days after declining the request, inform the individual's case manager, in writing, that the request was declined and the reasons for declining the request.

(i) If a DSA has provided transportation as a habilitation activity, out-of-home respite in a camp described in §259.361(b)(2)(D) of this subchapter, adaptive aids, nursing, or CFC PAS/HAB to an individual during a period of 60 consecutive days while the individual is temporarily staying at a location outside the catchment area in which the individual resides, the DSA may accept another request from the individual or LAR that the DSA provide services outside the catchment area only if the individual has returned to the catchment area in which the individual resides and received services in that catchment area.

§259.360. Providing Physical Therapy, Occupational Therapy, and Speech and Language Pathology as a Telehealth Service.

(a) Except as described in subsection (c) of this section, a service provider of physical therapy, occupational therapy, or speech and language pathology may provide physical therapy, occupational therapy, or speech and language pathology to an individual as a telehealth service.

(b) If a service provider of physical therapy, occupational therapy, or speech and language pathology provides physical therapy, occupational therapy, or speech and language pathology to an individual as a telehealth service, a DSA must ensure that the service provider:

(1) uses a synchronous audio-visual platform to interact with the individual, supplemented with or without asynchronous store and forward technology;

(2) does not use an audio-only platform to provide the service; and

(3) before providing the telehealth service:

(A) obtains the written informed consent of the individual or LAR to provide the service; or

(B) obtains the individual or LAR's oral consent to receive the telehealth service and documents the oral consent in the individual's record.

(c) A DSA must ensure that a service provider of physical therapy, occupational therapy, or speech and language pathology performs certain services in person, as required by the Texas Medicaid Provider Procedures Manual. Such services must include:

(1) a service that requires a physical agent modality or hands-on therapy, such as a paraffin bath, aquatic therapy, manual therapy, massage, and ultrasound;

(2) orthotic management and training, initial encounter and subsequent encounters;

(3) prosthetic management or training for an upper or lower extremity, initial encounter and subsequent encounters;

(4) a wheelchair assessment and training; and

(5) a complex rehabilitation technology assessment.

§259.361. Respite and Dental Treatment.

(a) An individual may receive a maximum of 30 days of in-home and out-of-home respite combined, during an IPC period.

(b) A DSA must ensure that:

(1) in-home respite is provided in the individual's residence or the residence of a relative or friend that is not one of the settings listed in paragraph (2) of this subsection;

(2) out-of-home respite is provided in one of the following settings:

(A) an agency foster home;

(B) a nursing facility;

(C) an ICF/IID;

(D) an approved outdoor camp accredited by the American Camping Association;

(E) the residence of another person receiving a Medicaid waiver service; or

(F) an ALF; and

(3) the setting in which out-of-home respite is provided is:

(A) acceptable to the individual or LAR; and

(B) an accessible, safe, and comfortable environment for the individual and promotes the individual's health and welfare.

(c) If a DSA provides out-of-home respite in a residence described in subsection (b)(2)(E) of this section, the DSA must:

(1) obtain written approval from each person residing in the residence who is receiving a Medicaid waiver service, or LAR, for the provision of respite in the residence; and

(2) ensure that no more than four persons receiving a Medicaid waiver service are residing in the residence.

(d) The maximum amount HHSC approves as payment to a DSA for all dental treatment and adaptive aids combined for an individual is \$10,000 per IPC period.

(e) A DSA must follow the process for requesting authorization to purchase dental treatment described in the Community Living Assistance and Support Services Provider Manual.

§259.363. DSA: Documentation of Services Delivered and Record-keeping.

(a) A DSA must ensure that for each direct service provided, except adaptive aids, dental treatment, minor home modifications, CFC ERS, CFC support management, and a direct service that is documented through an electronic visit verification system, as listed in 1 TAC §354.4005(b) (relating to Applicability), a service provider:

(1) documents:

(A) the type of service provided;

(B) the date and the time the service begins and ends;

(C) the type of contact (phone or in-person);

(D) the name of the person with whom the contact occurred;

(E) a description of the activity performed, unless the activity is a non-delegated task provided by an unlicensed service provider that is documented on an IPP;

(F) the signature and title of the service provider; and

(G) the progress or lack of progress in achieving a goal or outcome in the individual's IPP in observable, measurable terms that directly relate to the specific goal or outcome; and

(2) completes an HHSC Documentation of Services Delivered form to document the provision of a direct service that is supported by the documentation required in paragraph (1) of this subsection.

(b) A DSA must ensure that, after a service provider makes the last entry on an HHSC Documentation of Services Delivered form, a staff person other than the service provider signs and dates the form as a timekeeper as verification of the accuracy of the information on the form.

(c) A DSA must maintain a separate record for each individual receiving CLASS Program services and CFC services from the DSA. The individual's record must include:

(1) a copy of the individual's current IPC and any other IPC authorized for the current IPC period;

(2) a copy of the individual's current IPP and any other IPP developed for the current IPC period;

(3) a copy of the individual's current PAS/HAB plan;

(4) if transportation is included on the IPC as a habilitation activity or as an adaptive aid, a copy of the individual's individual transportation plan;

(5) a copy of the individual's current ID/RC Assessment;

(6) if the DSA was the individual's DSA when the individual enrolled in the CLASS Program:

(A) the original ID/RC Assessment signed by a physician; or

(B) the original level of care form signed by a physician and was in use before the ID/RC Assessment;

(7) a copy of the current adaptive behavior screening assessment;

(8) a copy of the current HHSC CLASS/DBMD Nursing Assessment form;

(9) a copy of the current HHSC Related Conditions Eligibility Screening Instrument form;

(10) any new or revised HHSC Provider Agency Model Service Backup Plan form for the current IPC period;

(11) the documentation required by subsection (a)(1) of this section;

(12) the completed HHSC Documentation of Services Delivered forms signed and dated by a timekeeper as required by subsection (b) of this section; and

(13) any other relevant documentation concerning the individual.

§259.365. Employment Assistance and Supported Employment.

(a) A DSA must ensure that a service provider of employment assistance and a service provider of supported employment meets the qualifications described in §259.355(d)(18) of this subchapter (relating to Qualifications of DSA Staff Persons).

(b) Before including employment assistance on an individual's IPC, a DSA must ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(c) A DSA must ensure that employment assistance:

(1) consists of an employment assistance service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with the individual's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of the individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, transportation as a habilitation activity, prevocational services, supported employment, or CFC PAS/HAB is provided; and

(3) does not include using Medicaid funds paid by HHSC to the DSA for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual;

or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business.

(d) Before including supported employment on an individual's IPC, a DSA must ensure and maintain documentation in the individual's record that supported employment is not available to the individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.).

(e) A DSA must ensure that supported employment:

(1) consists of a supported employment service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(2) is not provided to an individual with the individual present at the same time that respite, transportation as a habilitation activity, prevocational services, employment assistance, or CFC PAS/HAB is provided; and

(3) does not include:

(A) sheltered work or other similar types of vocational services furnished in specialized facilities; or

(B) using Medicaid funds paid by HHSC to the DSA for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(i) paying an employer:

(I) to encourage the employer to hire an individual; or

(II) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(ii) paying the individual:

(I) as an incentive to participate in supported employment activities; or

(II) for expenses associated with the start-up costs or operating expenses of an individual's business.

§259.367. Prohibition of Seclusion.

A DSA must not use seclusion.

§259.369. DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.

If a DSA, service provider, staff person, volunteer, or controlling person knows or suspects that an individual is being or has been abused, neglected, or exploited, the DSA must report or ensure that the person with knowledge or suspicion reports the allegation of abuse, neglect, or exploitation to DFPS immediately, but not later than 24 hours after having knowledge or suspicion, by:

(1) calling the DFPS Abuse Hotline toll-free telephone number, 1-800-252-5400; or

(2) using the DFPS Abuse Hotline website.

§259.371. DSA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.

(a) If a report required by §259.369 of this subchapter (relating to DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual) alleges abuse, neglect, or exploitation by a person who is not a service provider, staff person, volunteer, or controlling person of a DSA, the DSA must:

(1) as necessary:

(A) obtain immediate medical or psychological services for the individual; and

(B) assist in obtaining ongoing medical or psychological services for the individual;

(2) discuss with the individual or LAR alternative residential settings and additional services that may help ensure the individual's safety;

(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual; and

(4) preserve and protect evidence related to the allegation.

(b) If a report required by §259.369 of this subchapter alleges abuse, neglect, or exploitation by a service provider, staff person, volunteer, or controlling person of a DSA; or if the DSA is notified by HHSC of an allegation of abuse, neglect, or exploitation by a service provider, staff person, volunteer, or controlling person of the DSA, the DSA must:

(1) as necessary:

(A) obtain immediate medical or psychological services for the individual; and

(B) assist in obtaining ongoing medical or psychological services for the individual;

(2) take actions to secure the safety of the individual, including if necessary, ensuring that the alleged perpetrator does not have contact with the individual or any other individual until HHSC completes the investigation;

(3) when taking the actions described in paragraphs (1) and (2) of this subsection, avoid compromising the investigation or further traumatizing the individual;

(4) preserve and protect evidence related to the allegation;
and

(5) as soon as possible, but no later than 24 hours after the DSA reports or is notified of the allegation, notify the individual, the LAR, and the case manager of:

(A) the allegation report; and

(B) the actions the DSA has taken or will take based on the allegation, the condition of the individual, and the nature and severity of any harm to the individual, including the actions required by paragraph (2) of this subsection.

(c) During an HHSC investigation of an alleged perpetrator who is a service provider, staff person, volunteer, or controlling person of the DSA, a DSA must:

(1) cooperate with the investigation as requested by HHSC, including providing documentation and participating in an interview;

(2) provide HHSC access to:

(A) sites owned, operated, or controlled by the DSA;

(B) individuals, service providers, staff persons, volunteers, and controlling persons; and

(C) records pertinent to the investigation of the allegation; and

(3) ensure that service providers, staff persons, volunteers, and controlling persons of the DSA comply with paragraphs (1) and (2) of this subsection.

(d) After a DSA receives a final investigative report from HHSC for an investigation described in subsection (c) of this section, the DSA must:

(1) if the allegation of abuse, neglect, or exploitation is confirmed by HHSC:

(A) review the report, including any concerns and recommendations by HHSC; and

(B) take action within the DSA's authority to prevent the reoccurrence of abuse, neglect or exploitation, including disciplinary action against the service provider, staff person, or volunteer of the DSA confirmed to have committed abuse, neglect, or exploitation;

(2) if the allegation of abuse, neglect, or exploitation is unconfirmed, inconclusive, or unfounded:

(A) review the report, including any concerns and recommendations by HHSC; and

(B) take appropriate action within the DSA's authority, as necessary; and

(3) immediately, but not later than five calendar days after the date the DSA receives the HHSC final investigative report, notify the individual, the LAR, and the case manager of:

(A) the investigation finding; and

(B) the action taken by the DSA in response to the HHSC investigation as required by paragraphs (1) and (2) of this subsection.

(e) A DSA must not retaliate against:

(1) a service provider, staff person, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:

(A) the use of seclusion; and

(B) the use of a restraint not in compliance with federal and state laws, rules, and regulations; and

(2) an individual because a person on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the possible abuse, neglect, or exploitation of an individual, including:

(A) the use of seclusion; and

(B) the use of a restraint not in compliance with federal and state laws, rules, and regulations.

(f) At least annually, a DSA must:

(1) review all final investigative reports from HHSC for investigations described in subsection (c) of this section and, based on the review, identify program process improvements that help prevent the occurrence of abuse, neglect, and exploitation and improve the delivery of services; and

(2) evaluate critical incident data reported in accordance with §259.353(b) of this subchapter (relating to DSA: Protection of an Individual) and identify program process improvements that help prevent the occurrence of critical incidents and improve service delivery.

§259.373. DSA: Requirement for Translation.

If a DSA submits documentation to HHSC in accordance with this chapter containing information that is not in English, the DSA must, at the same time, submit a translation of the information in English.

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

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Karen Ray

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Health and Human Services Commission

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SUBCHAPTER I. FISCAL MONITORING

26 TAC §259.401

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 section affects Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§259.401. Financial Errors.

(a) Other than the initial administrative fee, if HHSC reimburses a program provider for a claim for services that were delivered before the effective date on an IPC, HHSC applies the error to the total number of units reimbursed for such services.

(b) If HHSC reimburses a DSA for more than four hours of nursing used to decide whether to delegate nursing tasks to a CFC PAS/HAB service provider, HHSC applies the error to the total number of units reimbursed in excess of the four hour maximum for such services.

(c) If HHSC reimburses a DSA for more than 10 hours during an individual's IPC year for nursing to prevent service breaks caused by a CFC PAS/HAB service provider not being available to provide delegated nursing tasks, HHSC applies the error to the total number of units reimbursed in excess of the 10 hour maximum for such services.

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SUBCHAPTER J. DECLARATION OF DISASTER

26 TAC §259.451

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas 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 section affects Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

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

(a) HHSC may allow a program provider to use one or more of the exceptions described in subsections (c) - (p) 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 HHSC 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 §259.61(a)(2) of this chapter (relating to Process for Enrollment of an Individual), an initial visit for an individual who resides in the disaster area may be conducted by videoconferencing or in person.

(d) Notwithstanding §259.61(h)(1)(A) and (B) of this chapter, a DSA staff person may complete the requirements described in §259.61(h)(1)(A) of this chapter for an individual who resides in the disaster area by videoconferencing or in person.

(e) Notwithstanding §259.61(h)(2) of this chapter, an appropriate professional may complete an adaptive behavior screening assessment of an individual who resides in the disaster area by videoconferencing in accordance with the professional's licensing requirements or in person.

(f) Notwithstanding §259.61(h)(3)(A) - (C) and §259.75(a)(1)(B) of this chapter (relating to Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria), an RN may complete the HHSC CLASS/DBMD Nursing Assessment form, the HHSC Related Conditions Eligibility Screening Instrument, and the ID/RC Assessment of an individual who resides in the disaster area by videoconferencing in accordance with the RN's licensing requirements or in person.

(g) Notwithstanding §259.65(c)(1)(A) of this chapter (relating to Development of an Enrollment IPC), a case manager is not required to ensure an individual who resides in the disaster area or LAR signs and dates an enrollment IPC and IPP if:

(1) the meeting required by §259.65(a)(1) of this chapter is conducted by videoconferencing;

(2) the individual or LAR orally agrees with the enrollment IPC and IPPs; and

(3) the case manager documents the individual's or LAR's oral agreement on the enrollment IPC and IPPs.

(h) Notwithstanding §259.79(a)(1) and (2) of this chapter (relating to Renewal and Revision of an IPC), a case manager may conduct all IPP service review meetings with an individual who resides in the disaster area and LAR in person or by videoconferencing.

(i) Notwithstanding §259.79(b)(6) of this chapter, a case manager is not required to ensure that an individual who resides in the disaster area or LAR signs the HHSC IPP Service Review form, if:

(1) the meeting required by §259.79(a) of this chapter is conducted by videoconferencing;

(2) the individual or LAR orally agree with the HHSC IPP Service Review form; and

(3) the case manager documents the individual's or LAR's oral agreement on the HHSC IPP Service Review form.

(j) If a service planning team meeting described in §259.79(c) is conducted by videoconferencing for an individual who resides in the disaster area, a case manager may:

(1) on a renewal or revised IPP:

(A) notwithstanding §259.79(f)(2)(A) of this chapter, replace the signature of an individual or LAR by documenting on the

renewal or revised IPP that the individual or LAR orally agreed to the renewal or revised IPP; and

(B) notwithstanding §259.79(f)(2)(C) of this chapter, obtain the signature of the DSA after the service planning team meeting; and

(2) on a proposed renewal or proposed revised IPC:

(A) notwithstanding §259.79(g)(1)(A) of this chapter, replace the signature of the individual or LAR by documenting on the proposed renewal or proposed revised IPC that the individual or LAR orally agreed to the proposed renewal or proposed revised IPC; and

(B) notwithstanding §259.79(g)(1)(C) of this chapter, obtain the signature of the DSA after the service planning team meeting.

(k) Notwithstanding §259.73(a)(1) of this chapter (relating to Service Limits), the combined cost for adaptive aids and dental treatment may exceed \$10,000 during an IPC period if:

(1) the requested adaptive aid or repair that causes the combined cost to be exceeded is:

(A) an adaptive aid that replaces an adaptive aid that was destroyed as a result of the disaster; or

(B) a repair of an adaptive aid that was damaged as a result of the disaster; and

(2) the requested adaptive aid or repair added to the individual's IPC does not result in the combined cost of dental treatment and adaptive aids to exceed \$15,000 during the IPC period, which includes the cost of repair and maintenance of an adaptive aid.

(l) Notwithstanding §259.255(a) of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing Less Than \$500), if an individual requests the repair or replacement of an adaptive aid damaged or destroyed as a result of a disaster:

(1) a DSA must provide to the case manager:

(A) a description of the repair or replacement of the adaptive aid that was damaged or destroyed as a result of the disaster; and

(B) the cost of the repair or replacement of the adaptive aid;

(2) the case manager must:

(A) include the cost of the adaptive aid or repair, which must be within the cost described in subsection (k)(2) of this section, in the individual's:

(i) proposed renewal or proposed revised IPC; and

(ii) renewal or revised IPP;

(B) obtain the individual or LAR's oral agreement to the proposed renewal or proposed revised IPC and IPP;

(C) document the individual's or LAR's oral agreement on the proposed renewal or proposed revised IPC and IPP; and

(D) sign the proposed renewal or proposed revised IPC and IPP;

(3) the DSA must sign the proposed renewal or proposed revised IPC and IPP; and

(4) the CMA must submit to HHSC, no later than 180 days after the effective date of the order or proclamation described in subsection (a) of this section:

(A) the proposed renewal or proposed revised IPC;

(B) the renewal or revised IPP;

(C) the description of the repair or replacement described in paragraph (1) of this subsection; and

(D) a written statement of the case manager that the requested adaptive aid or repair is not available through a third-party resource.

(m) Notwithstanding §§259.257, 259.259, and 259.261 of this chapter (relating to Requirements for Authorization to Purchase an Adaptive Aid Costing \$500 or More, Requirements for Specifications for an Adaptive Aid, and Requirements for Bids of an Adaptive Aid), if an individual requests the repair or replacement of an adaptive aid costing \$500 or more damaged or destroyed as a result of a disaster:

(1) the DSA must provide to the case manager:

(A) a description of the repair or replacement of an adaptive aid that was damaged or destroyed as a result of the disaster; and

(B) one bid for the repair or replacement of an adaptive aid from a vendor that includes:

(i) the cost of the repair or replacement of the adaptive aid, which may be from a catalog, website, or brochure price list;

(ii) the amount of any additional expenses related to the delivery of the adaptive aid, including shipping and handling, taxes, installation, and other labor charges;

(iii) the date of the bid; and

(iv) the name, address, and telephone number of the vendor, who may not be a relative of the individual;

(2) the case manager must:

(A) include the cost of the adaptive aid or repair, which must be within the cost described in subsection (k)(2) of this section, in the individual's:

(i) proposed renewal or proposed revised IPC; and

(ii) renewal or revised IPP;

(B) obtain the individual's or LAR's oral agreement;

(C) document the individual's or LAR's oral agreement on the proposed renewal or proposed revised IPC and IPP; and

(D) sign the proposed renewal or proposed revised IPC and IPP;

(3) the DSA must sign the proposed renewal or proposed revised IPC and IPP; and

(4) the CMA must submit to HHSC, no later than 180 days after the effective date of the order or proclamation described in subsection (a) of this section:

(A) the description and bid of the repair or replacement described in paragraph (1) of this subsection;

(B) the proposed renewal or proposed revised IPC and IPP, completed as described in paragraphs (2) and (3) of this subsection; and

(C) a written statement of the case manager that the requested adaptive aid or repair is not available through a third-party resource.

(n) Notwithstanding §259.73(a)(2) of this chapter, the service limit for minor home modifications for an individual who resides in the disaster area may exceed \$10,000 during the time the individual is enrolled in the CLASS program if:

(1) the requested minor home modification or repair that causes the service limit to be exceeded is:

(A) a minor home modification that replaces a minor home modification that was destroyed as a result of the disaster; or

(B) a repair of a minor home modification that was damaged as a result of the disaster; and

(2) the requested minor home modification or repair added to the individual's IPC does not exceed \$15,000 for minor home modifications during the time the individual is enrolled in the CLASS program.

(o) Notwithstanding §§259.275, 259.277, and 259.279 of this chapter (relating to Requirements for Authorization to Purchase a Minor Home Modification, Requirements for Specifications for a Minor Home Modification, and Bid Requirements for a Minor Home Modification), if an individual requests the repair or replacement of a minor home modification damaged or destroyed as a result of a disaster:

(1) the DSA must provide to the case manager:

(A) a description of the repair or replacement of the minor home modification that was damaged or destroyed as a result of the disaster; and

(B) one bid for the repair or replacement of the minor home modification from a vendor that includes:

(i) the cost of the repair or replacement of the minor home modification, which may be from a catalog, website, or brochure price list;

(ii) the amount of any additional expenses related to the delivery of the minor home modification, including shipping and handling, taxes, installation, and other labor charges;

(iii) the date of the bid; and

(iv) the name, address, and telephone number of the vendor, who may not be a relative of the individual;

(2) the case manager must:

(A) include the cost of the minor home modification or repair, which must not exceed the cost described in subsection (n)(2) of this section, in the individual's:

(i) proposed renewal or proposed revised IPC; and

(ii) renewal or revised IPP;

(B) obtain the individual or LAR's oral agreement;

(C) document the individual's or LAR's oral agreement on the proposed renewal or proposed revised IPC and IPP; and

(D) sign the proposed renewal or proposed revised IPC and IPP;

(3) the DSA must sign the proposed renewal or proposed revised IPC and IPP; and

(4) the CMA must submit to HHSC, no later than 180 days after the effective date of the order or proclamation described in subsection (a) of this section:

(A) the description and bid of the repair or replacement described in paragraph (1) of this subsection;

(B) the proposed renewal or proposed revised IPC and IPP, completed as described in paragraphs (2) and (3) of this subsection; and

(C) a written statement of the case manager that the requested adaptive aid or repair is not available through a third-party resource.

(p) Notwithstanding §259.357(b)(1)(B) and (b)(2)(B) of this chapter (relating to Training of DSA Staff Persons, Service Providers, and Volunteers), a service provider may complete an online training course in cardiopulmonary resuscitation and choking prevention but an in-person evaluation by a qualified instructor is not required to be completed, if:

(1) as a result of the disaster, the service provider is unable to arrange for the in-person evaluation; and

(2) the in-person evaluation is completed within 90 calendar days after the disaster ends.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT

(FISCAL AFFAIRS)

**SUBCHAPTER B. PAYMENT PROCESSING--
ELECTRONIC FUNDS TRANSFERS**

34 TAC §5.12, §5.15

The Comptroller of Public Accounts proposes amendments to §5.12 concerning processing payments through electronic funds transfers and §5.15 concerning electronic funds transfers - paycards.

The amendments to §5.12 delete the definition of "comptroller approved EFTS form" in subsection (b)(4) because this term is no longer used in this subchapter and renumber the subsequent definitions accordingly; add the term "travel reimbursement" in subsection (b)(19) to acknowledge that pay cards issued to state employees may also provide access to travel reimbursement payments; change "funds" to "payments" in subsection (b)(19) to ensure the consistent use of the term in this subchapter; change "paycard" to "pay card" in subsections (b)(19) and (c)(2)(B) to correct the spelling of this term; and change "and" to "or" in subsection (b)(26)(C) to correct a typographical error.

The amendments to §5.15 change "funds" to "payments" in subsection (a)(2) to ensure the consistent use of the term in this sub-

chapter; add the term "travel reimbursement" in subsections (a) and (c) to acknowledge that pay cards issued to state employees may also provide access to travel reimbursement payments; in subsection (c), require state payroll and travel reimbursement payments to be deposited into a separate pay card account from state retirement payments to comply with the terms of the state's pay card contract, the special requirements that apply to each of these types of pay card deposits under Regulation E, 12 C.F.R. Part 1005, and the different treatments required for these types of pay card deposits for bank financial reporting purposes; and change "paycard" to "pay card" and "paycards" to "pay cards" throughout §5.15 to correct the spelling of this term.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by clarifying language and current pay card practices. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The amendments are proposed under Government Code, §403.016(j), which requires the comptroller to adopt rules to administer Government Code, §403.016 regarding electronic funds transfer.

The amendments implement Government Code, §403.016.

§5.12. Processing Payments Through Electronic Funds Transfers.

(a) Applicability. These rules govern EFT payments by the comptroller on behalf of custodial and paying state agencies as part of the electronic funds transfer system authorized by Government Code, §403.016.

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

(1) Automated clearing house (ACH)--A central distribution and settlement point for the electronic clearing of debits and credits between financial institutions subject to regulation under rules of an automated clearing house association and applicable regulatory law.

(2) ACH rules--The operating rules and guidelines governing the ACH network published by NACHA, the Electronic Payments Association and applicable federal regulatory law.

(3) Comptroller--The Comptroller of Public Accounts for the State of Texas.

~~[(4) Comptroller approved EFTS form--An EFTS form approved by the comptroller for use by a custodial or paying state agency in the EFTS.]~~

~~(4) [(5)] Credit entry--A type of EFT entry that the comptroller initiates on behalf of a paying state agency to credit a state payee's EFTS account at a domestic financial institution.~~

~~(5) [(6)] Custodial state agency--A state agency that establishes and maintains the state payee's account information. The custodial state agency may or may not be the paying state agency.~~

~~(6) [(7)] Direct deposit--A form of EFT payment using ACH for the electronic transfer of funds directly into a state payee EFTS account at a domestic financial institution.~~

~~(7) [(8)] Electronic funds transfer (EFT)--A transfer of funds which is initiated by the comptroller as originator to the originating depository financial institution to order, instruct, or authorize a receiving depository financial institution to perform a credit entry, reversal, or reclamation in accordance with this subchapter. For purposes of these rules, an EFT does not include a transaction originated by wire transfer, check, draft, warrant, or other paper instrument.~~

~~(8) [(9)] EFTS authorization--A state payee's agreement to allow the comptroller to originate state-issued payments by EFT on behalf of a paying state agency to a state payee EFTS account. A state payee may provide EFTS authorization and notice under Government Code, §403.016 by:~~

~~(A) submitting an EFTS authorization with a state payee's agreement on a comptroller approved form; or~~

~~(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.~~

~~(9) [(10)] EFTS form--An electronic or paper form submitted by a state payee as part of the EFTS. An EFTS form used by a custodial state agency or paying state agency is subject to comptroller approval.~~

~~(10) [(11)] Electronic funds transfer system (EFTS)--A system authorized by Government Code, §403.016, that is administered by the comptroller in accordance with these rules to make EFT payments to state payees on behalf of a paying state agency.~~

~~(11) [(12)] Financial institution--A state or national bank, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union that complies with NACHA rules and may be an originating depository financial institution or a receiving depository financial institution.~~

~~(12) [(13)] International ACH transaction (IAT)--An ACH entry involving a financial agency (as defined by NACHA rules) that is not located in the territorial jurisdiction of the United States. An international ACH transaction may be referred to as an IAT entry or IAT.~~

~~(13) [(14)] May not--A prohibition. The term does not mean "might not" or its equivalents.~~

~~(14) [(15)] NACHA--The National Automated Clearing House Association is the electronic payments association that establishes standards, rules and procedures that enable domestic financial institutions to exchange payments electronically.~~

~~(15) [(16)] Notification of change (NOC)--Information sent by a financial institution through the ACH network to notify the comptroller that previously valid information for a state payee has become outdated or that information contained in a prenotification is erroneous.~~

~~(16) [(17)] Originating depository financial institution--A financial institution that originates ACH entries on behalf of the comp-~~

troller and transmits ACH entries through the ACH network in accordance with NACHA rules.

(17) [(18)] Originator--The comptroller acts as the originator and authorizes an originating depository financial institution to transmit, on behalf of the state, a credit entry, reclamation, reversal, or prenotification entry to a state payee EFTS account at a domestic financial institution.

(18) [(19)] Pay card [Paycard]--A payment card issued to a state employee or annuitant that provides access to payroll, travel reimbursement, or retirement payments [funds] deposited to a designated account at a domestic financial institution as part of the EFTS through the comptroller's pay card [paycard] contract.

(19) [(20)] Paying state agency--A state agency for which the comptroller initiates payment. The term includes the comptroller of public accounts. A paying state agency may or may not be the custodial state agency.

(20) [(21)] Prenotification--A non-dollar entry sent by the comptroller through the ACH network to alert a receiving depository financial institution that a live dollar credit entry will be forthcoming and to request verification of the state payee's EFTS account information.

(21) [(22)] Receiving depository financial institution--A financial institution that receives ACH entries to a state payee EFTS account.

(22) [(23)] Reclamation--A request made by the comptroller in compliance with NACHA rules, to an originating depository financial institution to reclaim from a receiving depository financial institution any amounts received by a state payee after the state payee's death or legal incapacity, or the death of a beneficiary of a state payee.

(23) [(24)] Regulation E--The regulations adopted by the Bureau of Consumer Financial Protection at 12 C.F.R. Part 1005, as they may be amended, to implement the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.).

(24) [(25)] Reversal--An EFT entry initiated by the comptroller at the request of a paying state agency to correct an erroneous credit entry previously transmitted to a state payee EFTS account. The comptroller may initiate a reversal of an EFT payment of state employee payroll or retirement in compliance with NACHA rules.

(25) [(26)] State agency--

(A) a department, commission, board, office, or other agency in the executive or legislative branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts;

(B) the supreme court of Texas, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(C) a university system or [and] an institution of higher education as defined by Education Code, §61.003 other than a public junior college.

(26) [(27)] State payee--A person to whom a state payment is issued, including an individual, state employee, annuitant, business, vendor, governmental entity, or other legal recipient paid by the State of Texas.

(27) [(28)] State payee EFTS account--An account at a domestic financial institution designated by a state payee for EFTS payments.

(28) [(29)] Warrant--A state payment in the form of a paper instrument which is subject to applicable state law, is drawn on the State

of Texas treasury funds, and is payable to a state payee on behalf of a paying state agency by the comptroller or by a state agency with delegated authority to issue warrants under Government Code, §403.060. A warrant is not an approved means of electronic funds transfer as set out in subsection (c) of this section.

(29) [(30)] Wire transfer--An unconditional order to a financial institution to pay a fixed or determinable amount of money to a state payee upon receipt or on a day stated in the order that is transmitted by electronic or other means. Wire transfer is not an approved means of electronic fund transfer, as set out in subsection (c) of this section.

(c) Approved types of EFTS payments.

(1) The comptroller will approve the types of EFTS payments the state may use by rule and amend the approval based upon the comptroller's procedures and current technology.

(2) EFTS payment types approved by the comptroller to a state payee EFTS account include:

(A) direct deposit, except an IAT; and

(B) pay card [paycard].

(3) Any other type of payment which is not an approved type of EFTS payment under paragraph (2) of this subsection is not considered to be an approved type of EFTS payment under these rules. Warrants, wire transfers, and IAT are not approved types of EFTS payments.

(d) Compliance with applicable NACHA rules and regulation. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable law and NACHA regulations in EFTS transactions.

(e) Confidentiality. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable confidentiality requirements under the law, including maintaining the confidentiality of financial institution account numbers and state payee social security numbers.

(f) Audit. The comptroller is subject to audit by NACHA for compliance with NACHA rules concerning EFT transactions under this chapter. The comptroller may audit a paying or custodial state agency for compliance with applicable regulatory or NACHA rules concerning EFT transactions under this chapter. A paying or custodial state agency shall comply with an audit under this chapter.

(g) Notification.

(1) Any questions, comments, or complaints concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and these rules may be sent to the comptroller by mail to: Texas Comptroller of Public Accounts, Fiscal Management, 111 E. 17th Street, Room 911, Austin, Texas, 78711, or by email to tins.mail@cpa.texas.gov, or at such other email address as the comptroller may designate.

(2) The comptroller may provide additional information and updates on its website regarding notification.

(3) The comptroller may require the custodial state agency, the paying state agency, the state payee, and the financial institution to provide contact information as appropriate.

(h) Conflict of law. If there is a conflict in law between any of these rules and applicable law, the applicable law shall apply. If any provision of these rules are held to be invalid, illegal, or unenforceable due to a conflict of law, it will not affect any other provisions of these

rules, and the rules will be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

§5.15. *Electronic Funds Transfers - Pay Cards.* [Paycards]

(a) Pay cards for state [State] payroll, travel reimbursement, or retirement payments [paycard].

(1) The comptroller may enter into a contract to offer state employee payroll, travel reimbursement, or retirement payments using pay cards [a paycard], an approved type of EFTS payment under §5.12(c) of this title (relating to Processing Payments through Electronic Funds Transfers).

(2) Pay cards [A paycard] may be issued to a state employee or annuitant that provide [provides] access to payroll, travel reimbursement, or retirement payments [funds] deposited to a designated account at a domestic financial institution.

(b) Pay cards [Paycards] are subject to Regulation E.

(c) For payments made with [Paycard account] deposits to pay card accounts.

(1) The comptroller [state paycard account] may only deposit a [be used for] state employee's state payroll and travel reimbursement payments into [or retirement deposits initiated by the comptroller for] a [specific] state payroll and travel reimbursement pay card account [employee or annuitant].

(2) The comptroller [A state employee] may only [not use the paycard account for any] deposit an annuitant's state retirement [other than deposits of payroll] payments into a state retirement pay card account.

(3) If a state employee receives state payroll or travel reimbursement payments, as well as state retirement payments, the comptroller must deposit [An annuitant may not use] the payments into the appropriate pay card [paycard] account in accordance with paragraphs (1) and (2) of this subsection [for any deposit other than deposits of retirement payments].

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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Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



SUBCHAPTER Q. PRINTING AND ISSUANCE OF WARRANTS

34 TAC §5.400

The Comptroller of Public Accounts proposes amendments to §5.400 concerning printing and issuance of warrants.

The amendments to subsections (b)(1) and (5) and (e)(1) change "paycard" to "pay card" to correct the spelling of this term.

The amendment to subsection (b)(8)(C) changes "and" to "or" to correct a typographical error.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by cleaning up typographical errors. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.016(j), which requires the comptroller to adopt rules to administer Government Code, §403.016 regarding electronic funds transfer, and Government Code, §403.060(c), which requires the comptroller to promulgate rules for the effective and efficient administration of Government Code, §403.060 regarding printing and issuance of warrants.

The amendments implement Government Code, §403.016 and §403.060.

§5.400. *Printing and Issuance of Warrants.*

(a) Applicability. This rule governs the comptroller's delegation of the authority to print and issue warrants under Government Code, §403.060(a).

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

(1) Electronic Funds Transfer (EFT)--A transfer of funds which is initiated by the participating state agency as originator to the originating depository financial institution to order, instruct, or authorize a receiving depository financial institution to perform a credit entry, reversal, or reclamation. An EFT may include a pay card [paycard]. For purposes of this rule, an EFT does not include a transaction originated by wire transfer, check, draft, warrant, or other paper instrument.

(2) MOU--Memorandum of Understanding.

(3) National Automated Clearing House Association (NACHA)--The electronic payments association that establishes standards, rules, and procedures that enable domestic financial institutions to exchange payments electronically.

(4) Participating state agency--A state agency that has requested and received from the comptroller the delegated authority to print and issue warrants.

(5) Pay card [Paycard]--A payment card issued to a state payee that provides access to state funds as authorized by a state agency.

(6) Payment method--A warrant or an EFT payment.

(7) Regulation E--The regulations adopted by the Board of Governors of the Federal Reserve System at 12 C.F.R. Part 205, as they

may be amended, to implement the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.).

(8) State agency--

(A) a department, commission, board, office, or other agency in the executive or legislative branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts;

(B) the supreme court of Texas, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(C) a university system or [and] an institution of higher education as defined by Education Code, §61.003, other than a public junior college.

(9) State payee--A person to whom a state payment is issued, including an individual, state employee, annuitant, business, vendor, governmental entity, or other legal recipient paid by the state of Texas.

(10) Warrant--A state payment in the form of a paper instrument which is subject to applicable state law, is drawn on the state of Texas treasury funds, and is payable to a state payee on behalf of a state agency by the comptroller or a state agency with delegated authority to print and issue warrants under Government Code, §403.060(a). A warrant is not an approved means of EFT.

(c) Delegating the printing and issuance of warrants to a state agency. The head of a state agency must submit a written request to the comptroller's office to obtain delegated authority to print and issue warrants. The request must:

(1) identify the type of payments the agency is requesting to print and issue warrants for;

(2) identify the payment method the agency intends to use; and

(3) state the duration requested for the delegation authority.

(d) If the request is approved by the comptroller's office, the participating state agency shall agree to the following:

(1) the participating state agency agrees to bear all of its own costs and expenses in relation to the printing and distribution of warrants and/or EFT payments; and

(2) must agree to a MOU that includes, but is not limited to:

(A) general duties and responsibilities of the participating state agency;

(B) warrant design requirements and specifications;

(C) security and audit of warrants and/or EFT payments;

(D) recording of warrants and/or EFT payments issued by the participating state agency;

(E) cancellation of warrants and/or EFT payments issued by the participating state agency;

(F) replacement of warrants and/or EFT payments issued by the participating state agency;

(G) contingency planning for printing and issuance of warrants and/or EFT payments; and

(H) EFT payments.

(e) EFT payments.

(1) A participating state agency that is delegated authority by the comptroller to print and issue warrants may instead make payments through the EFT system, including the issuance of a pay card [paycard], as provided by Government Code, §403.016(g).

(2) A participating state agency that makes payments through the EFT system shall comply with Regulation E and all NACHA rules and regulations.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES AND COMMUNITY FIRST CHOICE (CFC) SERVICES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of §§45.101 - 45.105, 45.201, 45.202, 45.211 - 45.218, 45.221 - 45.227, 45.231, 45.301, 45.302, 45.401 - 45.410, 45.503, 45.505, 45.521 - 45.525, 45.531, 45.533, 45.601 - 45.609, 45.611 - 45.619, 45.621, 45.701 - 45.709, 45.801 - 45.811, and 45.902 in Texas Administrative Code Title 40 (40 TAC), Part 1, Chapter 45, concerning the Community Living Assistance and Support Services and Community First Choice (CFC) Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal all of the rules in 40 TAC Chapter 45. These rules govern the provision of Community Living Assistance and Support Services (CLASS) Program services. The CLASS Program is a Medicaid waiver program authorized under §1915(c) of the Social Security Act. HHSC is proposing new rules governing the CLASS Program in 26 TAC Chapter 259 elsewhere in this issue of the *Texas Register*.

SECTION-BY-SECTION SUMMARY

The proposed repeal of 40 TAC, Chapter 45 removes rules governing the CLASS Program. New rules governing the CLASS Program are being proposed in 26 TAC Chapter 259.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not affect the number of HHSC employee positions;
- (3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;
- (4) the proposed repeals will not affect fees paid to HHSC;
- (5) the proposed repeals will not create new rules;
- (6) the proposed repeals will repeal existing rules;
- (7) the proposed repeals will not change the number of individuals subject to the repeals; and
- (8) the proposed repeals will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposed repeals. The proposed repeals do not impose any additional costs on small businesses or micro-businesses that are required to comply with the rules. No rural communities contract with HHSC to be a CLASS program provider.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the repeals are in effect, the public will benefit from clearer rules that explain the policies and requirements of the CLASS Program.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals because the repeals will not require these persons to alter their current business practices.

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 26, 2022 at 1:00 p.m. (central time). The link to register for the webinar meeting is <https://attendee.gotowebinar.com/register/5797564706801514763>.

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 e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed 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 e-mailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 21R133" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§45.101 - 45.105

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.101. *Purpose.*

§45.102. *Application.*

§45.103. *Definitions.*

§45.104. *Description of the CLASS Program and CFC Option.*

§45.105. *Excluded Services.*

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5077

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SUBCHAPTER B. ELIGIBILITY,
ENROLLMENT, AND REVIEW
DIVISION 1. ELIGIBILITY AND
MAINTENANCE OF INTEREST LIST

40 TAC §45.201, §45.202

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.201. Eligibility Criteria for CLASS Program Services and CFC Services.

§45.202. CLASS Interest List.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5077

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DIVISION 2. ENROLLMENT PROCESS

40 TAC §§45.211 - 45.218

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.211. Written Offer of CLASS Program Services.

§45.212. Process for Enrollment of an Individual.

§45.213. Determination by HHSC of Whether an Individual Meets LOC VIII Criteria.

§45.214. Development of Enrollment IPC.

§45.215. Development of IPPs.

§45.216. HHSC's Review of an Enrollment IPC.

§45.217. CDS Option.

§45.218. Service Limits.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5077

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DIVISION 3. REVIEWS

40 TAC §§45.221 - 45.227

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.221. Annual Review by HHSC of Whether an Individual Meets LOC VIII Criteria.

§45.222. Renewal IPC and Requirement for Authorization to Continue Services.

§45.223. Renewal and Revision of an IPC.

§45.224. Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy.

§45.225. Utilization Review of an IPC by HHSC.

§45.226. Tracking Annual Renewal of an ID/RC Assessment by a DSA.

§45.227. Tracking Annual Renewal of an IPC by a CMA.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5077

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DIVISION 4. SERVICE BACKUP PLANS

40 TAC §45.231

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall

adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§45.231. Service Backup Plans.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §45.301, §45.302

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.301. Individual's Right to a Fair Hearing.

§45.302. Mandatory Participation Requirements of an Individual.

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

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SUBCHAPTER D. TRANSFER, DENIAL, SUSPENSION, REDUCTION, AND TERMINATION OF SERVICES

40 TAC §§45.401 - 45.410

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.401. Coordination of Transfers.

§45.402. Denial of a Request for Enrollment into the CLASS Program.

§45.403. Denial of a CLASS Program Service or CFC Service.

§45.404. Suspension of CLASS Program Services or CFC Services.

§45.405. Reduction of a CLASS Program Service or CFC Service.

§45.406. Termination of CLASS Program Services and CFC Services With Advance Notice Because of Ineligibility or Leave from the State or Because DSAs Cannot Ensure Health and Safety.

§45.407. Termination of CLASS Program Services and CFC Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements.

§45.408. Termination of CLASS Program Services and CFC Services Without Advance Notice.

§45.409. Termination of CLASS Program Services and CFC Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy.

§45.410. Requirement to Submit Fair Hearing Request Summary to DADS.

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

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SUBCHAPTER E. SUPPORT FAMILY SERVICES

DIVISION 1. INTRODUCTION

40 TAC §45.503, §45.505

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.503. *Contracting Requirements.*

§45.505. *Eligibility.*

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

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DIVISION 2. SUPPORT FAMILY AGENCY

40 TAC §§45.521 - 45.525

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.521. *Support Family Agency Functions.*

§45.522. *Pre-Placement Activities.*

§45.523. *Placement.*

§45.524. *Ongoing Support.*

§45.525. *Monthly Monitoring.*

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

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DIVISION 3. SUPPORT FAMILIES

40 TAC §§45.531, §45.533

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.531. *Support Family Requirements.*

§45.533. *Support Family Duties.*

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

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SUBCHAPTER F. ADAPTIVE AIDS AND

MINOR HOME MODIFICATIONS

DIVISION 1. ADAPTIVE AIDS

40 TAC §§45.601 - 45.609

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.601. *Items and Services Purchasable as an Adaptive Aid.*

§45.602. *Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance.*

§45.603. *Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than \$500.*

§45.604. *Requirements For Authorization to Purchase an Adaptive Aid Costing \$500 or More.*

§45.605. *Requirements for Specifications for an Adaptive Aid.*

§45.606. *Requirements for Bids of an Adaptive Aid.*

§45.607. *Time Frames for Providing Adaptive Aids to Individuals.*

§45.608. *Cost Effective Delivery of Adaptive Aid.*

§45.609. *Requirements of DSA Following Provision of Adaptive Aid.*

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

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DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §§45.611 - 45.619

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.611. *Items or Services Purchasable as a Minor Home Modification.*

§45.612. *Authorization Limit for Minor Home Modifications and Amount for Repair and Maintenance.*

§45.613. *Requirements for Authorization to Purchase a Minor Home Modification.*

§45.614. *Requirements for Specifications for a Minor Home Modification.*

§45.615. *Bid Requirements for a Minor Home Modification.*

§45.616. *Inspection of a Minor Home Modification.*

§45.617. *Time Frames for Completion of Minor Home Modification.*

§45.618. *Repair or Replacement of Minor Home Modification.*

§45.619. *Satisfaction of Minor Home Modification.*

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

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DIVISION 3. CFC ERS

40 TAC §45.621

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code §32.021.

§45.621. *CFC ERS.*

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

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SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

40 TAC §§45.701 - 45.709

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.701. *CMA Compliance with Rules.*

§45.702. *Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services.*

§45.703. *Qualifications of CMA Staff Persons.*

§45.704. *Training of CMA Staff Persons and Volunteers.*

§45.705. *CMA Service Delivery.*

§45.706. *CMA Documentation of Services Delivered and Record-keeping.*

§45.707. *CMA: Quality Management Process.*

§45.708. *CMA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.*

§45.709. *CMA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.*

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

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SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

40 TAC §§45.801 - 45.811

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

- §45.801. *DSA Compliance with Rules.*
- §45.802. *DSA: Protection of Individuals and Annual Explanations.*
- §45.803. *Qualifications of DSA Staff Persons.*
- §45.804. *Training of DSA Staff Persons, Service Providers, and Volunteers.*
- §45.805. *DSA: Service Delivery.*
- §45.806. *Respite and Dental Treatment.*
- §45.807. *DSA: Documentation of Services Delivered and Record-keeping.*
- §45.808. *Employment Assistance and Supported Employment.*
- §45.809. *Prohibition of Seclusion.*
- §45.810. *DSA: Reporting Allegations of Abuse, Neglect, or Exploitation of an Individual.*
- §45.811. *DSA: Requirements Related to the Abuse, Neglect, and Exploitation of an Individual.*

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SUBCHAPTER I. FISCAL MONITORING

40 TAC §45.902

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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, including the CLASS Program.

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

§45.902. *Financial Errors.*

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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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE RULES AND PROCEDURES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §§850.3 - 850.5 and §850.11

Subchapter C. Councils, Board, and Committees, §§850.33 - 850.35

Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures, §§850.60 - 850.62, 850.69, 850.82, and 850.84

TWC proposes the following new section to Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.7

TWC proposes the repeal of the following section of Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter C. Councils, Board, and Committees, §850.32

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 208, 84th Texas Legislature, Regular Session (2015), added Texas Labor Code, §351.002, which transferred the administration of vocational rehabilitation (VR) services from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC effective September 1, 2016. The administrative rules relating to the VR Services Program were transferred from DARS to TWC and codified under 40 TAC Chapter 850. On May 13, 2019, TWC amended Chapter 850 to align the chapter with TWC's operation of the VR Services Program.

The purpose of the proposed amendments to Chapter 850 is to address stakeholder comments, clarify existing rules, and improve program service delivery, consistency, and efficiency.

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for re-adoption, revision, or repeal each rule adopted by that agency. TWC reviewed the rules in Chapter 850 and proposes changes to clarify the rule language and improve consistency with the Texas Labor Code and federal regulations. Those changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

TWC proposes the following amendments to Subchapter A:

§850.3. Definitions

Section 850.3 is amended to add the definition for "Agency" and to revise the term from "counselor" to "vocational rehabilitation counselor" for clarification. Throughout Chapter 850, the term "counselor" has been updated to "vocational rehabilitation counselor" or "VR counselor."

§850.4. Opportunities for Citizen Participation

Section 850.4 is amended to clarify information regarding open meetings and add a reference to 40 TAC Chapter 800, Subchapter G, relating to Petition for Adoption of Rules.

§850.5. Complaints

Section 850.5 is amended to expand the methods for filing complaints.

§850.7. Monitoring and Oversight of Vocational Rehabilitation Counselor Performance and Decision Making.

New §850.7 is added to establish an administrative rule for the monitoring and oversight of VR counselor performance and decision making in accordance with Texas Labor Code, §352.104, Training and Supervision of Counselors.

§850.11. Qualified Vocational Rehabilitation Counselor

Section 850.11 is amended to include Vocational Rehabilitation Division acronym "VRD" in the references to "management" and in place of "division" for clarity.

Section 850.11(f) is amended to clarify that reimbursement is allowed for one GRE exam.

SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES

TWC proposes the following amendments to Subchapter C:

§850.32. Definitions

Section 850.32 is repealed because the section is no longer needed. The definition for "Agency" and acronym "RCT" are defined elsewhere in Chapter 850.

SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND HEARING PROCEDURES

TWC proposes the following amendments to Subchapter E:

§850.60. Scope

Section 850.60 is amended to remove references to the Business Enterprises of Texas (BET) program because the program is addressed in 40 TAC Chapter 854; remove Comprehensive Rehabilitative Services (CRS) from the scope of services because CRS falls under Texas Health and Human Services Commission oversight; and add a reference to the Client Assistance Program (CAP).

§850.61. Definitions

Section 850.61 is amended to remove the definitions of "counselor" and "State Plan" because the terms are defined in §850.3.

§850.62. Filing a Request for Review

Section 850.62 is amended to state that the request for a review shall be filed within 180 calendar days from the date of the determination and that the CAP can assist and advocate for customers during an appeal and informal dispute resolution.

§850.69. Reasonable Accommodations

Section 850.69 is amended to clarify that TWC shall bear the costs related to providing reasonable accommodations for hearings or proceedings conducted.

§850.82. Documentary Evidence and Official Notice

Section 850.82 is amended to remove the reference to 34 Code of Federal Regulations (CFR) Part 395 as BET appeals are addressed in 40 TAC Chapter 854.

§850.84. Impartial Hearing Officer Decision

Section 850.84 is amended to remove the references to Texas Labor Code, Chapter 355 and 34 CFR Part 395 as BET appeals are addressed in 40 TAC Chapter 854.

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 no estimated losses or increases in revenue to the state or 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 address stakeholder comments, clarify existing rules, and improve program service delivery, consistency, and efficiency.

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.

Cheryl Fuller, Director, Vocational Rehabilitation Division, 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 to clarify existing rules and improve consistency with the Texas Labor Code and federal regulations.

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 October 3, 2022.

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

40 TAC §§850.3 - 850.5, 850.7, 850.11

PART V. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as

it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rules affect Texas Human Resources Code, Chapter 111 and Texas Labor Code, Chapter 352.

§850.3. Definitions.

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

(1) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in the State of Texas. The definition of "Agency" shall apply to all uses of the term in this chapter.

~~[(1) Counselor--An Agency employee who is trained to provide vocational guidance and counseling and meets the minimum qualifications designated in a functional job description.]~~

(2) State Plan--The plan for vocational rehabilitation services submitted by the Vocational Rehabilitation Division [(VRD)] in compliance with Title I of the Rehabilitation Act of 1973, as amended.

(3) Vocational rehabilitation counselor--An Agency employee who is trained to provide vocational guidance and counseling and meets the minimum qualifications designated in a functional job description.

§850.4. Opportunities for Citizen Participation.

In addition to other procedures listed in Part 2 of this title (relating to Department of Assistive and Rehabilitative Services), individuals with disabilities, parents of infants and toddlers with disabilities, and other citizens have the opportunity to:

(1) voice concerns through public representation on Agency committees, councils, and boards;

(2) attend and make public comments at open [public] meetings (notices of all open [public] meetings and agenda items are published in accordance with the Texas Open Meetings Act [~~in the Texas Register~~]);

(3) comment on all proposed rules; and

(4) submit a petition requesting the adoption of rules pursuant to Chapter 800, Subchapter G of this title (relating to Petition for Adoption of Rules).

~~[(A) All petitions proposing the adoption of Agency rules shall be submitted in writing to the Commission. The petition must contain the following:]~~

~~[(i) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;]~~

~~[(ii) a statement of the statutory or other authority under which the rule is to be promulgated; and]~~

~~[(iii) the public benefits anticipated as a result of adopting the rule or the anticipated implications that could result from the failure to adopt the proposed rule.]~~

~~[(B) Agency staff reviews the requests and present recommendations to the Commission for action.]~~

§850.5. Complaints.

(a) Complaints may be filed with the Agency either ~~in writing~~ through mail, ~~email~~ [e-mail], ~~phone~~, [or] facsimile, or by videotape for individuals who use sign language to communicate. Complaints should be directed to the customer's local vocational rehabilitation [VR] office or may be submitted to the Agency's Customer Relations staff as indicated on the Agency's website [via email to ~~eustomers@twe.state.tx.us~~].

(b) For the purpose of directing complaints to the Agency, the Agency may notify customers and service recipients of its name, mailing address, and telephone number by including the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from or through the Agency;

(2) on a sign that is prominently displayed in the place of business of each individual or entity engaging in a program that is funded in any part by money derived from or through the Agency;

(3) in a bill for service provided by an individual or entity engaging in a program that is funded in any part by money derived from or through the Agency; or

(4) in other media for dissemination of information as determined by the Agency.

(c) Ordinarily, the Agency resolves complaints within 60 days.

§850.7. Monitoring and Oversight of Vocational Rehabilitation Counselor Performance and Decision Making.

(a) The Vocational Rehabilitation Division will provide specific guidance to vocational rehabilitation (VR) counselors as required by Texas Labor Code, §352.104.

(b) VR counselor supervisors shall ensure that VR counselors complete all required and necessary training.

(c) VR counselor supervisors shall monitor VR counselor performance through case reviews, offer required training, and use other tools, as appropriate, to provide guidance and enhance VR counselor performance and decision making.

§850.11. Qualified Vocational Rehabilitation Counselor.

(a) The Vocational Rehabilitation Division (VRD) helps vocational rehabilitation (VR) counselors to meet the Comprehensive System of Personnel Development (CSPD) standard, as set forth in 34 Code of Federal Regulations §361.18, by making funds available through the Qualified Vocational Rehabilitation Counselor (QVRC) program for the required graduate education except when:

(1) unforeseen circumstances occur that may restrict or prohibit the funding; or

(2) VRD management discontinues a VR counselor's participation in the program in the best interests of VRD [the division].

(b) The VRD director or designee must approve QVRC financial assistance. This financial assistance is contingent on:

- (1) funding;
- (2) VRD management approval; and
- (3) compliance with qualifications for participation.

(c) Qualifications for participation in the QVRC program require that VR [vocational rehabilitation] counselors and transition VR [vocational rehabilitation] counselors applying for assistance must:

- (1) have completed the initial training year;
- (2) be meeting or exceeding job performance expectations;

(3) obtain the appropriate approvals to pursue a graduate degree or prescribed coursework;

(4) apply for Rehabilitation Services Administration [(RSA)] scholarship and university stipend funding, if applicable; and

(5) be accepted by the appropriate institution of higher education.

(d) A VR counselor who meets the CSPD standard is considered a QVRC [Qualified Vocational Rehabilitation Counselor].

(e) A VR counselor is expected to meet the CSPD standard within seven years from completion of the initial training year. VRD [Divisions] must conduct transcript reviews and/or confirm certifications to determine compliance with standards or to outline coursework to be completed by the VR counselor.

(f) A VR counselor is expected to pay all costs or expenses:

(1) associated with the college application, [and] admission, and [except one] GRE exam (reimbursement of one GRE exam is allowed) [fee];

(2) related to tuition, fees, and books for any coursework that must be repeated because of failure to successfully complete; and

(3) related to completing work necessary to remove any grade of "I" (Incomplete) within three months, unless there are valid reasons (for example, serious illness, or university regulations to the contrary).

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

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855

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SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES

40 TAC §850.32

The rule is repealed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed repeal affects Texas Human Resources Code, Chapter 111 and Texas Labor Code, Chapter 352.

§850.32. Definitions.

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

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40 TAC §§850.33 - 850.35

The rules are proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rules affect Texas Human Resources Code, Chapter 111 and Texas Labor Code, Chapter 352.

§850.33. *Tasks.*

[Tasks.] The Rehabilitation Council of Texas (RCT) shall:

(1) review, analyze, and advise the Vocational Rehabilitation Division (VRD) about its [their] performance of responsibilities, particularly those relating to:

- (A) eligibility determination (including order of selection);
- (B) the extent, scope, and effectiveness of services provided; and
- (C) functions performed by VRD that potentially affect the ability of individuals with disabilities to achieve rehabilitation goals and objectives;

(2) advise [the Vocational Rehabilitation Division (VRD)] and, at its discretion, help prepare the State Plan for Vocational Rehabilitation Services; amendments to the plan; and applications, reports, needs assessments, and evaluations required;

(3) to the extent feasible, review and analyze the effectiveness of, and customer satisfaction with:

(A) the functions performed by state agencies and other public and private entities responsible for performing functions for individuals with disabilities; and

(B) vocational rehabilitation services:

(i) provided, or paid for from funds made available, under 29 United States Code (USC) §725, or through other public or private sources; and

(ii) provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities; and

(C) the employment outcomes achieved by individuals who receive services under 29 USC §725, including the availability of health and other employment benefits in connection with those employment outcomes;

(4) coordinate with other councils in the state, including the State Independent Living Council established under 29 USC §796d; the advisory panel established under [§612(a)(20) of] the Individuals with Disabilities Education Act, 20 USC §1412(a)(21); the State Council on Developmental Disabilities described in 42 USC §15025; the State Mental Health Planning Council established under 42 USC §300x-3(a); and the state workforce investment board;

(5) advise VRD and coordinate working relationships between VRD [the divisions] and the State Independent Living Council and centers for independent living within the state; and

(6) perform other comparable functions consistent with the Rehabilitation Act of 1973, as amended, that the RCT determines to be appropriate.

§850.34. *Reports.*

The Rehabilitation Council of Texas (RCT) shall:

(1) prepare and submit an annual report to the governor or appropriate state entity and the Commission on the status of vocational rehabilitation programs operated within the state, and make the report available to the public; and

(2) submit to the commissioner of the Rehabilitation Services Administration, United States Department of Education, periodic reports that the commissioner may reasonably request, and keep records that the commissioner finds necessary to verify those reports.

§850.35. *Funding.*

The Rehabilitation Council of Texas [(RCT)] is funded primarily by federal funds, and its existence is required in order for the Agency to receive and expend federal funds.

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

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SUBCHAPTER E. VOCATIONAL REHABILITATION SERVICES APPEALS AND HEARING PROCEDURES

40 TAC §§850.60 - 850.62, 850.69, 850.82, 850.84

The rules are proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rules affect Texas Human Resources Code, Chapter 111 and Texas Labor Code, Chapter 352.

§850.60. *Scope.*

(a) The following statutes and regulations authorize the procedures established by this subchapter [chapter]:

(1) The Rehabilitation Act of 1973, as amended, 29 United States Code [USC] §701 et seq. and regulations of the United States [U.S.] Department of Education, Rehabilitation Services Administration, 34 Code of Federal Regulations (CFR) Part 361, as amended, relating to the State Vocational Rehabilitation Services Program;

[(2) 34 CFR Part 395, as amended, relating to Vending Facility Program for the Blind on Federal and Other Property; and]

(2) ~~[(3)]~~ 34 CFR Part 367, as amended, relating to the Independent Living Services for Older Individuals Who Are Blind (ILS-OIB); and~~[-]~~

(3) 34 CFR Part 370, as amended, relating to the Client Assistance Program.

(b) The procedures in this subchapter apply to those determinations made by Agency personnel that affect the provision of vocational rehabilitation (VR) services ~~and ILS-OIB[, independent living services for older individuals who are blind, and the Business Enterprises of Texas program.]~~

(1) Unless the determination concerns the denial, reduction, suspension, or termination of VR services ~~or ILS-OIB, [independent living services for older individuals who are blind, or comprehensive rehabilitation services by the Agency,]~~ it is not subject to review under the procedures of this subchapter.

(2) The following decisions or determinations are not subject to review under this subchapter:

(A) ~~Administrative [administrative]~~ decisions that are made by Agency supervisors or managers without reference to any specific applicant or customer and that apply generally to the provision of VR services to applicants or customers, including to decisions concerning the assignment of personnel;

(B) ~~Decisions [decisions]~~, diagnoses, judgments, actions, or omissions of third-party vendors or service providers;

(C) ~~Decisions [decisions]~~ concerning the content of an applicant's or customer's record of service for which remedies are provided under 34 CFR §361.38(c)(4) and §361.47(a)(12); and

(D) ~~Decisions [decisions]~~ allegedly violating any state or federal antidiscrimination or civil rights statute (as amended), including the provisions of Texas Labor Code, Chapter 21; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act, Section 504; ~~the Americans with Disabilities Act];~~ or the Age Discrimination in Employment Act.

(c) Ineligibility. The following may challenge a determination of ineligibility through the procedures of this subchapter ~~[division]~~:

(1) ~~Applicants [applicants]~~ who are found not to be eligible for VR services; and

(2) ~~Previously [previously]~~ eligible individuals who have been determined no longer eligible for VR services under 34 CFR §361.43.

(d) An individual's decision to seek an informal resolution of matters about which the individual is dissatisfied shall not prevent, compromise, or delay the individual's access to formal resolution procedures in this subchapter ~~[division]~~.

(e) The Agency shall not suspend, reduce, or terminate VR services being provided to an applicant or customer, including evaluation and assessment services and the development of an Individualized Plan for Employment, pending a resolution of the applicant's or customer's appeal by mediation or hearing, unless:

(1) the applicant or customer requests a suspension, reduction, or termination of services; or

(2) the Agency has evidence that the applicant or customer obtained the services through misrepresentation, fraud, collusion, or criminal conduct.

§850.61. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(1) Act--The Rehabilitation Act of 1973 as amended, 29 United States Code [USC] §701, et seq.

(2) Appellant--An applicant, eligible individual, authorized representative, or parent who has initiated formal procedures under this subchapter.

(3) Applicant--An individual who submits an application for vocational rehabilitation [VR] services in accordance with 34 Code of Federal Regulations [CFR] Part 361.

(4) Authorized representative--An attorney authorized to practice law in the State of Texas, or an individual designated by a party to represent the party in hearing procedures. The term includes a parent or an individual made legally responsible for a child by a court of competent jurisdiction.

~~[(5) Counselor--An Agency employee who is trained to provide vocational guidance and counseling and meets the minimum qualifications designated in a functional job description.]~~

(5) ~~[(6)]~~ Customer--An applicant or an individual with a disability who is receiving vocational rehabilitation [VR] services.

(6) ~~[(7)]~~ Discovery--The process by which a party, before any final hearing on the merits, may obtain evidence and other information that is relevant to a claim or defense in the appeal.

(7) ~~[(8)]~~ Eligible individual--Any individual with a disability determined to be eligible to receive vocational rehabilitation [VR] services.

(8) ~~[(9)]~~ Hearing--A formal review conducted under this subchapter ~~[chapter]~~. This term includes prehearing conferences.

(9) ~~[(10)]~~ Impartial hearing officer (IHO)--An individual who is appointed to conduct a hearing under this subchapter ~~[chapter]~~.

(10) ~~[(11)]~~ Individualized Plan for Employment--A plan developed for each individual determined to be eligible for vocational rehabilitation [VR] services, in accordance with 34 Code of Federal Regulations [CFR] Part 361.

(11) ~~[(12)]~~ Parent--The term "parent," whether singular or plural, means a minor child's natural or adoptive parent, the spouse of the minor child's natural or adoptive parent, the minor child's surrogate or foster parent, the spouse of the surrogate or foster parent, or other individual made legally responsible for the minor child by a court.

(12) ~~[(13)]~~ Party--An individual or agency named or admitted to participate in a formal hearing.

(13) ~~[(14)]~~ Record--The official record of a hearing, including all arguments, briefs, pleadings, motions, intermediate rulings, orders, evidence received or considered, statements of matters officially noticed, questions and offers of proof, objections and rulings on objections, proposed findings of fact, conclusions of law, and IHO [hearing officer] decision; any other decision, opinion, or report by the IHO [hearing officer] or Commission; and all memoranda or data, including customer and applicant files, submitted to or considered by the IHO [impartial hearing officer].

~~[(15) State Plan--The plan for VR services submitted by the Agency's Vocational Rehabilitation Division in compliance with the Act.]~~

§850.62. *Filing a Request for Review.*

(a) Any applicant or eligible individual who is dissatisfied with a determination made by the Agency, as described in §850.60 of this subchapter (relating to Scope), may request, or, if appropriate, may request through the individual's authorized representative, a review of the determination. Although no prescribed form is required to file a request, preprinted forms for this purpose are available on request within the Agency's Office of General Counsel or at any Agency vocational rehabilitation [VR] office.

(b) The request for a review shall be filed within 180 calendar days from the date of the determination and shall be filed in writing with the hearings coordinator within the Agency's Office of General Counsel. A request shall be considered filed on the day that it is received by the hearings coordinator within the Agency's Office of General Counsel.

~~[(1) A request shall be considered filed on the day that it is received by the hearings coordinator within the Agency's Office of General Counsel.]~~

~~[(2) Preprinted forms for this purpose are available on request from the hearings coordinator within the Agency's Office of General Counsel or any Agency VR office.]~~

(c) On receiving a request for review, the hearings coordinator within the Agency's Office of General Counsel shall, within five working days, mail the appellant:

(1) the name, address, and telephone number of the Client Assistance Program established under federal law that can, among other things, assist and advocate for customers during an appeal and informal dispute resolution;

(2) the name of the IHO appointed to hear the appeal, and the date, time, and place of any prehearing;

(3) a copy of applicable hearing procedures; and

(4) notice that the appellant has the right to request mediation procedures.

§850.69. Reasonable Accommodations.

(a) Any hearing or proceedings conducted under this subchapter shall be held, whenever feasible, by telephone (directly or by relay), at a time and place reasonably accessible to the appellant and any witnesses, and convenient for parties. In considering the physical location of a hearing or proceeding, the IHO shall consider, among other factors:

(1) the suitability of any proposed facilities for a hearing, including the ability of the appellant and any witnesses to gain physical access to the proceedings and facilities; and

(2) the comparative distances and times required to travel from places of work or residence to a proposed hearing location by parties and witnesses.

(b) The Agency shall, upon reasonable notice, provide the appellant with readers or interpreters. Reasonable notice shall be considered to be no fewer than five working days prior to the proceeding, unless good cause for a shorter period exists in the judgment of the IHO.

(c) A copy of a transcript prepared during hearing proceedings and all notices and documents shall be provided to the appellant in an accessible format on request.

(d) The Agency shall bear the costs related to providing reasonable accommodations for hearings or proceedings conducted under this subchapter.

§850.82. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpt.

(b) When numerous similar documents that are otherwise admissible are offered into evidence, the IHO may limit the documents received to those that are typical and representative. The IHO may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties are given the right to examine the documents from which such abstracts were made.

(c) The following laws, rules, regulations, and policies are officially noticed:

(1) The Rehabilitation Act of 1973, as amended, 29 United States Code [USC] §701, et seq.;

(2) United States [U.S.] Department of Education regulations, 34 Code of Federal Regulations [CFR] Parts 361 and[.] 367[.] and 395];

(3) The Agency's State Plan for Vocational Rehabilitation Services;

(4) The Agency's Vocational Rehabilitation and[.] Independent Living for Older Individuals Who Are Blind [.] and Rehabilitation] policy manuals; and

(5) Texas Administrative Code, Title 40, Part 20, Texas Workforce Commission.

(d) Official notice also may be taken of:

(1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of the Agency's specialized knowledge.

§850.84. Impartial Hearing Officer Decision.

(a) Within 30 days of the hearing completion date, the IHO shall issue a decision that is based on the evidence and consistent with the provisions of the approved State Plan [state plan]; the Act, as amended; federal vocational rehabilitation regulations, state regulations, and policies that are consistent with federal requirements, and shall provide to the appellant or, if appropriate, the appellant's authorized representative, and the Agency's authorized representative or the Agency's Office of General Counsel, as appropriate, a full written report of the findings of fact, conclusions of law, and any other grounds for the decision.

(b) The hearing completion date is the date upon which the IHO receives the transcript of the oral hearing, if any was prepared, ~~[of the oral hearing,]~~ or, if no transcript was prepared, ~~[the date of the adjournment of]~~ the hearing's adjournment date [hearing].

(c) The decision shall address each issue considered by the IHO.

(d) The IHO may prescribe such remedies as are appropriate within the scope of, and permitted by, as applicable, Texas Labor Code, Chapter 352 [Chapters 352 and 355]; the Act, as amended; the regulations of the Rehabilitation Services Administration of the United States [U.S.] Department of Education, 34 Code of Federal Regulations [CFR] Parts 361 and[.] 365[.] and 395]; and the Agency's policies and rules.

(1) The IHO shall not award restitutionary, compensatory, or monetary relief, including monetary damages, to any party.

(2) The IHO shall not prescribe an action affecting the employment of an Agency employee.

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

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CHAPTER 856. VOCATIONAL REHABILITATION SERVICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 856, relating to Vocational Rehabilitation Services:

Subchapter A. Vocational Rehabilitation Services: Program and Purpose, §856.1 and §856.3

Subchapter B. Eligibility, §§856.20, 856.40, 856.41, 856.45, 856.50, 856.52, 856.53, and 856.56

Subchapter C. Provision of Vocational Rehabilitation Services, §856.57

Subchapter D. Customer Participation, §856.59

Subchapter E. Comparable Benefits, §856.71

Subchapter G. Criss Cole Rehabilitation Center, §856.84

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

On October 17, 2017, TWC adopted rules under 40 TAC Chapter 856 to align with the integration of TWC, Vocational Rehabilitation Services, and Blind Services. Further amendments to Chapter 856 were adopted on July 31, 2018, to incorporate the Criss Cole Rehabilitation Center.

The purpose of the proposed amendments to Chapter 856 is to address stakeholder comments, clarify existing rules, improve consistency with federal regulations, and increase efficiency of program operations.

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC conducted a rule review of Chapter 856 and proposes changes to clarify the rule language and improve program services. Those changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES: PROGRAM AND PURPOSE

TWC proposes the following amendments to Subchapter A:

§856.1. Purpose

Section 856.1 is amended to add additional language to better align with Workforce Innovation and Opportunity Act.

§856.3. Definitions

Section 856.3 is amended to add definitions for "academic training" and "vocational rehabilitation counselor."

SUBCHAPTER B. ELIGIBILITY

TWC proposes the following amendments to Subchapter B:

§856.20. Eligibility

Section 856.20 is amended to include additional language to better align with 34 Code of Federal Regulations (CFR) §361.42.

§856.40. Provision of Services

Section 856.40 is amended to rename the section "Provision of Goods and Services" to better describe the section's content.

Section 856.40 is amended to include additional language to better align with 34 CFR §361.45.

§856.41. Comprehensive Assessment

Section 856.41 is amended to clarify the criteria used for comprehensive assessments and to clarify that certain types of assessments are not mandatory but are completed as appropriate to identify vocational rehabilitation needs and determine the services necessary to meet the customer's employment goal.

§856.45. Vocational and Other Training Services

Section 856.45 is amended to clarify that training at a vocational or technical school is not required to occur in Texas, to clarify exceptions for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) recipients, and to remove current §856.45(c)(9) as this was added in the "academic training" definition as well as §856.45(e), which precludes the Vocational Rehabilitation Division from paying tuition and fees to a business, technical, or vocational school above the published fees.

§856.50. Post-Employment Services

Section 856.50 is amended to better align with 34 CFR §361.5(c)(41).

§856.52. Individualized Plan for Employment

Section 856.52 is amended to increase efficiency in customer notifications.

§856.53. Customers Determined to Have Achieved Employment Outcome

Section 856.53 is amended to remove §856.53(b) as post-employment services are covered in §856.50.

§856.56. Assistive Technology Devices

Section 856.56 is amended to remove the reference to cost.

SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

TWC proposes the following amendments to Subchapter C:

§856.57. Alternative Purchasing Methods - Rates for Medical Services

Section 856.57 is amended to increase efficiency in the process of establishing rates for medical services by adding that TWC's executive director or deputy executive director may establish the rates annually based on the standards adopted by TWC's three-member Commission. Section 856.57 is also amended to include the process for providing the notice of the proposed schedule of rates for public comment.

SUBCHAPTER D. CUSTOMER PARTICIPATION

TWC proposes the following amendments to Subchapter D:

§856.59. Purpose of Customer Participation

Section 856.59 is amended to clarify that customers may need to participate in the cost of services based on their financial need unless the customer is a recipient of Social Security benefits, either SSI or SSDI.

SUBCHAPTER E. COMPARABLE BENEFITS

TWC proposes the following amendments to Subchapter E:

§856.71. Availability of Comparable Services and Benefits

Section 856.71 is amended to include additional language to better align with 34 CFR §361.53(a)(1).

SUBCHAPTER G. CRISS COLE REHABILITATION CENTER

TWC proposes the following amendments to Subchapter G:

§856.84. Initial Eligibility

Section 856.84 is amended to remove the requirement that a customer is a Texas resident.

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 no estimated losses or increases in revenue to the state or 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 address stakeholder comments, clarify existing rules, improve consistency with federal regulations, and increase efficiency of program operations.

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.

Cheryl Fuller, Director, Vocational Rehabilitation Division, 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 to clarify rules, improve consistency with federal regulations, and increase efficiency of program operations.

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 October 3, 2022.

SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES: PROGRAM AND PURPOSE

40 TAC §856.1, §856.3

STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rules affect Texas Human Resources Code, Chapter 111, and Texas Labor Code, Chapter 352.

§856.1. Purpose.

The Vocational Rehabilitation Services Program is a joint state- and federal-funded program administered by the Agency's [~~Texas Workforce Commission (TWC);~~] Vocational Rehabilitation Division (VRD) to assess, plan, develop, and provide vocational rehabilitation services for eligible individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that these individuals can prepare for and engage in competitive integrated employment and achieve economic self-sufficiency. The Vocational Rehabilitation Services Program seeks to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion in and integration into society. In accordance with the Rehabilitation Act of 1973, as amended, VRD [~~the Vocational Rehabilitation Division~~] is the single designated state unit for the Vocational Rehabilitation Services Program [~~VR program~~].

§856.3. Definitions.

In addition to the definitions contained in Texas Labor Code, §352.001 and 34 Code of Federal Regulations [CFR] §361.5 [~~vocational rehabilitation~~], the following words and terms, when used in this chapter, shall have the following meanings.

(1) Academic training--A postsecondary program of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential. Academic training does not include continuing education required for maintaining certification in a field in which the customer is already gainfully employed.

(2) [(4)] Applicant--An individual who applies to the Vocational Rehabilitation Division [~~VRD~~] for vocational rehabilitation services.

(3) [(2)] Blind--An individual having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(4) [(3)] Customer--An individual with a disability who has applied for or is receiving vocational rehabilitation services.

(5) [(4)] Visually Impaired--A visual acuity of not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees.

(6) Vocational rehabilitation counselor--An Agency employee who is trained to provide vocational guidance and counseling

and meets the minimum qualifications designated in a functional job description.

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

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SUBCHAPTER B. ELIGIBILITY

40 TAC §§856.20, 856.40, 856.41, 856.45, 856.50, 856.52, 856.53, 856.56

The rules are proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rules affect Texas Human Resources Code, Chapter 111, and Texas Labor Code, Chapter 352.

§856.20. Eligibility.

(a) The Vocational Rehabilitation Division (VRD) bases eligibility for vocational rehabilitation (VR) services on the following requirements only.

(b) Within 60 days of application, a VR counselor [~~VRD~~] must:

(1) determine that the applicant has a physical or mental impairment;

(2) determine that the impairment constitutes or results in a substantial impediment to employment for the applicant;

(3) establish that the applicant requires VR services to prepare for, secure [~~enter~~], [~~engage in~~; or] retain, advance in, or regain [~~gainful~~] employment that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(4) presume that the applicant is capable of achieving an employment outcome[;] unless there is a demonstration by clear and convincing evidence in trial work that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.

(c) Social Security disability recipients and beneficiaries are presumed eligible for VR services[;] unless there is a demonstration by clear and convincing evidence in trial work that the applicant is incapable of achieving an employment outcome because of the severity of the applicant's disability.

(d) Eligibility or ineligibility must be determined no later than 60 days after the applicant, or the applicant's representative, as appropriate, has signed and submitted an application for VR services in accordance with the provisions of §856.19 of this subchapter (relating to Application).

(e) Exceptions to the 60-day time frame for determining eligibility or ineligibility may occur only when:

(1) VRD notifies the applicant that unforeseen circumstances beyond the control of VRD preclude it from completing the determination in 60 days;

(2) the applicant, or the applicant's representative, as appropriate, agrees to a specific extension of time; or

(3) VRD requires further time exploring an applicant's abilities, capabilities, and capacity to perform in work situations through trial work.

(f) Eligibility must be determined before applying Subchapter F of this chapter (relating to Methods of Administration of Vocational Rehabilitation), if appropriate, [~~relating to Methods of Administration of Vocational Rehabilitation~~] and Subchapter D of this chapter (relating to Customer Participation).

§856.40. *Provision of Goods and Services.*

(a) The Vocational Rehabilitation Division [VRD], as appropriate to the vocational rehabilitation needs of each eligible individual, provides goods and services necessary to render a customer employable, subject to certain limitations prescribed in this subchapter and Subchapters D and E of this chapter (relating to Customer Participation; and Comparable Benefits).

(b) Services are provided only as planned in advance and set forth in the customer's individualized plan for employment (IPE). The IPE must be designed to achieve a specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

§856.41. *Comprehensive Assessment.*

(a) After a customer has been determined [found] eligible[.] for vocational rehabilitation services, the Vocational Rehabilitation Division (VRD) conducts assessments using the criteria in subsection (b) of this section for vocational rehabilitation needs and, if necessary, rehabilitation technology needs for each customer in order to develop an individualized plan for employment (IPE) that is designed to achieve the customer's employment outcome.

(b) ~~To [If more information is needed to]~~ determine the appropriate employment outcome and services required to achieve it, VRD, as appropriate in each case, may conduct [conducts] an assessment of the customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the customer.

(c) The assessment is limited to information that is necessary to identify the customer's rehabilitation needs and develop the IPE and may, to the extent needed, include:

(1) an analysis of medical, psychological, vocational, educational, and other related factors that bear on the customer's impediment to employment and rehabilitation needs. Additional examinations are authorized after services are initiated when conditions arise that jeopardize the customer's IPE;

(2) an analysis of the customer's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievement, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(3) an appraisal of the customer's patterns of work behavior and services needed to acquire occupational skills and to develop

work attitudes, work habits, work tolerance, and social and behavioral patterns suitable for successful job performance; and

(4) an assessment, through provision of rehabilitation technology services, of the customer's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the customer's informed choice.

(d) VRD uses, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the customer, the family of the customer, and education agencies.

§856.45. *Vocational and Other Training Services.*

(a) The Vocational Rehabilitation Division (VRD) purchases vocational and other training services for customers who require additional knowledge or skills to enter employment consistent with their aptitudes and ability, and compatible with their physical or mental impairments.

(b) VRD purchases vocational and other training services through an appropriate facility. These facilities include accredited colleges and universities, certified public or private businesses, technical and vocational schools, on-the-job training, correspondence course training, tutorial training, and community rehabilitation program training.

(c) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) is subject to the following:

(1) Academic training in proprietary vocational schools and technical institutes must be provided only in schools that are licensed or certified by the Agency on the Licensed Career Schools and Colleges Directory website, the Eligible Training Provider System website, or another regulatory agency, before including the training on the individualized plan for employment [certified by the State of Texas].

(2) No vocational rehabilitation (VR) funds may be used to pay for academic training unless VRD and the customer have made maximum efforts to secure grant assistance in whole or in part from other sources to pay for the training.

(3) The PELL grant, like any other comparable services and benefits, must be applied to the educational process before the expenditure of VRD funds for services under this section. Services must not be denied pending receipt of a PELL grant, but must be contingent upon the customer's making application if eligible.

(4) Academic training must be provided through public, tax-supported colleges and universities in Texas unless:

(A) a specific curriculum related to the customer's academic major is not available at a Texas public institution;

(B) academic training elsewhere is determined to be more economical; or

(C) academic training elsewhere provides specialized services needed by the customer.

(5) If the customer chooses to obtain academic training at a private college or university in Texas or at a college or university outside Texas and the provisions in paragraph (4) of this subsection do not apply, academic support must be limited to that which the customer would receive if he or she attended a state-supported college or university in Texas, unless the customer is a recipient of Social Security benefits, either Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(6) A customer who is blind, does not meet the residency requirements of a particular institution, and is not eligible for tuition exemption under Texas Education Code, §54.364 may receive VRD tuition assistance based on the customer's economic need. Unless the customer is a recipient of Social Security benefits, either SSI or SSDI, [but the] payments must not exceed the tuition paid for a customer who does meet the residency requirements.

(7) Tuition and fee exemption is an exemption from payment of tuition and/or required fees normally charged by a state-supported college or university. Required fees include student services, building use, health center use, lab fees, and property deposits not reimbursable to the student. Required fees do not include optional fees.

(8) Any equipment purchased for the customer during academic training must be needed by the customer to help maintain academic success so that the customer can meet the employment outcome.

~~[(9) Academic training does not include continuing education required for maintaining certification in a field in which the customer is already gainfully employed.]~~

~~(9) [(10)]~~ Once admitted to academic training:

(A) the customer must maintain and complete a full-time course load as defined by the school or educational institution [college or university]. This requirement may be waived if:

- (i) the customer is a graduating senior;
- (ii) the customer is an incoming freshman (first two semesters or quarters);
- (iii) the customer is a returning adult (first academic year only);
- (iv) the customer is in summer school; or
- (v) other extenuating circumstances prevent the customer from participating in a full-time course load; and

(B) the customer is required to meet with the VR counselor at least once each semester, to submit add or drop slips as changes occur, and to provide grade slips or transcripts to the VR counselor at the end of each semester.

(d) VRD requires that each customer who is provided with vocational or other training services by VRD apply for financial assistance where reasonably available. This assistance can include federal, state, or local grants-in-aid and private scholarships where applicable. If the customer has not done so before the time of application for vocational rehabilitation services, the VR counselor assists the customer in doing so.

~~[(e) VRD does not pay tuition and fees to a business, technical, or vocational school in excess of the published fees.]~~

§856.50. *Post-Employment Services.*

(a) The Vocational Rehabilitation Division [VRD] may provide post-employment services to customers [who have been determined rehabilitated] in order to maintain or strengthen the customer's employment. A customer may be considered for post-employment services if he or she has an employment-related problem that does not entail a complex rehabilitation effort or address a new and distinct substantial impediment to employment.

(b) Post-employment services are services that are necessary for the customer to maintain, regain, or advance in an employment outcome that is consistent with the customer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

~~[(c) Post-employment services must be related to the previously planned employment outcome.]~~

§856.52. *Individualized Plan for Employment.*

(a) The Vocational Rehabilitation Division (VRD) initiates and continuously develops an individualized plan for employment (IPE) for each individual eligible for vocational rehabilitation (VR) services and for each individual being provided such services in trial work. All IPEs must be written using the form prescribed by VRD for this purpose.

(b) VRD advises the customer or, the customer's parent, guardian, or other representative, as appropriate, of the customer's options and all VRD procedures and requirements affecting the development and review of an IPE, including the availability of special modes of communication.

(c) The VR counselor and customer or, as appropriate, the customer's parent, guardian, or other representative, uses information obtained during the assessment to help the customer make informed choices about VR ~~[vocationa]l rehabilitation~~ needs, employment outcome, intermediate rehabilitation objectives, and the nature and scope of VR ~~[vocationa]l rehabilitation~~ services and the service providers to be included in the IPE.

(d) The VR counselor must provide the customer or, as appropriate, the customer's representative, with a copy of the IPE and its amendments, in the mode of communication specified by the customer or representative.

(e) All substantive revisions necessary to reflect changes in the customer's employment outcome, specific VR ~~[vocationa]l rehabilitation~~ services, service providers, and the methods used to procure services must be incorporated into the customer's IPE.

(f) The customer may develop all or part of the IPE with assistance from the ~~[VRD]~~ VR counselor, a qualified vocational rehabilitation [VR] counselor not employed by VRD, or another resource outside VRD. VRD does not pay for non-VRD assistance with IPE development. The IPE is not final until approved by the ~~[VRD]~~ VR counselor. A copy of the plan and any amendments are provided to the customer or the customer's parent, guardian, or other representative, as appropriate.

(g) The data used to prepare the IPE must include the information necessary to satisfy federal requirements and to adequately document the customer's plan of services. Regardless of the approach selected by the customer to develop the IPE, the IPE must, at a minimum, contain the following mandatory components:

(1) a description of the customer's specific employment outcome;

(2) a description of the specific VR ~~[vocationa]l rehabilitation~~ services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services; personal assistance services, including training in the management of those services; and timelines for initiating the services and for achieving the employment outcome;

(3) a description of the entity chosen by the customer or, as appropriate, the customer's representative, that will provide the VR ~~[vocationa]l rehabilitation~~ services, and the methods used to procure the services;

(4) a description of criteria to evaluate progress toward achievement of the employment outcome;

(5) the terms and conditions of the IPE, including, as appropriate, information describing:

- (A) VRD responsibilities; and
- (B) customer responsibilities, including:
 - (i) the customer's responsibilities related to his or her employment outcome;
 - (ii) if applicable, the customer's participation in paying for the costs of the plan;
 - (iii) the customer's responsibility to apply for and secure comparable benefits; and
 - (iv) the responsibilities of other entities resulting from arrangements made under comparable services or benefits;

(6) for a customer with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying:

- (A) the extended services that the customer needs; and
 - (B) the source of extended services or, if the source of the extended services cannot be identified at the time that the IPE is developed, a description of the basis for a reasonable expectation that a source will become available; and
- (7) as determined to be necessary, a statement of projected need for post-employment services.

(h) In developing an IPE for a student with a disability who is receiving special education services, VRD must consider the student's individualized education program.

(i) The VR counselor must advise the customer of the customer's rights and the means by which the customer may express and seek remedy for dissatisfaction with the plan, including the opportunity for an administrative review of VRD action and a fair hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules in Chapter 850 of this title (relating to Vocational Rehabilitation Services Administrative Rules and Procedures).

(j) The VR counselor reviews the IPE as often as necessary, but on at least an annual basis, at which time the customer or the customer's parent, guardian, or other representative, as appropriate, is afforded an opportunity to review the plan and, if necessary, jointly redevelop its terms.

(k) The IPE is a joint commitment that must be signed by both the VR counselor and the customer.

(l) VRD may provide only goods and services that are reasonable and necessary to achieve the employment outcome identified in the customer's IPE [~~customer IPEs~~].

(m) Before suspending, reducing, or terminating any planned service in the IPE, VRD shall provide [~~send written~~] notification of intent to the customer [~~customer's last known address~~].

(n) VRD must suspend, reduce, or terminate the customer's planned services no sooner than 10 working days after [~~written~~] notice has been provided [~~mailed~~] to the customer.

§856.53. *Customers Determined to Have Achieved Employment Outcome.*

[(a)] The Vocational Rehabilitation Division [~~VRD~~] determines a customer to have achieved an employment outcome when the following requirements are met:

(1) the provision of services under the customer's individualized plan for employment (IPE) has contributed to the achievement of the employment outcome;

(2) the customer has achieved the employment outcome that is described in the customer's IPE and that is consistent with the customer's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) the employment outcome is in an integrated setting;

(4) the customer has maintained the employment outcome for at least 90 days; and

(5) the customer and the vocational rehabilitation [~~VR~~] counselor consider the employment outcome to be satisfactory and agree that the customer is performing well on the job.

[(b) After a customer has been determined to have achieved an employment outcome, VRD may provide post-employment services as required to maintain, regain, or advance in employment.]

§856.56. *Assistive Technology Devices.*

(a) Assistive technology devices are purchased only after evaluation of the customer's need [~~and the cost~~]. Simple and less expensive alternatives must be considered first.

(b) The customer must return to the Vocational Rehabilitation Division [~~VRD~~] any assistive technology device no longer needed for training, employment, or pursuit of employment.

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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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §856.57

The rule is proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rule affects Texas Human Resources Code, Chapter 111, and Texas Labor Code, Chapter 352.

§856.57. *Alternative Purchasing Methods - Rates for Medical Services.*

Under Texas Labor Code, §352.054, this section sets forth the [~~rule adopts~~] standards governing the determination of rates paid for medical services provided by the Agency. The rates determined under these standards are reevaluated annually:

(1) Rates shall be established based on Medicare and Medicaid schedules for current procedural terminology. Where Medicare and Medicaid schedules are not applicable, rates that represent best value shall be established based on factors that include reasonable and customary industry standards for each specific service.

(2) Rates shall be established at a level adequate to ensure that enough qualified providers are available to provide assessment

and treatment within a geographic distribution that reflects customer or claimant distribution.

(3) Notification of the proposed schedule of rates shall be published in the *Texas Register* to allow interested persons to present comments to the Agency before the rates are established.

(4) After the reevaluation process is completed in accordance with the requirements in paragraphs (1) and (2) of this section, the Agency's executive director or deputy executive director may establish the rates for medical services.

(5) ~~[(3)]~~ Exceptions to established rates may be made on a case-by-case basis by the Agency's medical director or optometric consultant.

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

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SUBCHAPTER D. CUSTOMER PARTICIPATION

40 TAC §856.59

The rule is proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rule affects Texas Human Resources Code, Chapter 111, and Texas Labor Code, Chapter 352.

§856.59. *Purpose of Customer Participation.*

(a) Establishing customer participation in service costs encourages customer commitment to an employment outcome, creates a cooperative relationship between the customer and the Vocational Rehabilitation Division (VRD), and maximizes VRD's limited funds.

(b) VRD may require [requires] customers to participate in the cost of services based on financial need, unless the customer is a recipient of Social Security benefits, either Supplemental Security Income or Social Security Disability Insurance.

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

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SUBCHAPTER E. COMPARABLE BENEFITS

40 TAC §856.71

The rule is proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rule affects Texas Human Resources Code, Chapter 111, and Texas Labor Code, Chapter 352.

§856.71. *Availability of Comparable Services and Benefits.*

(a) If comparable services or benefits exist under any other program and are available to the customer at the time needed to achieve the employment outcome in the customer's individualized plan for employment (IPE), the Vocational Rehabilitation Division (VRD) must use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation (VR) services.

(b) If comparable services or benefits exist under any other program, but are not available to the customer at the time necessary to satisfy the employment outcome in the consumer's IPE, VRD must provide VR services until those comparable services and benefits become available.

(c) The following services are exempt from determination of the availability of comparable services and benefits:

- (1) assessment for determining eligibility and priority for services;
- (2) assessment for determining VR needs;
- (3) VR counseling, guidance, and referral services;
- (4) placement services;
- (5) rehabilitation technology services; and
- (6) post-employment services consisting of the services listed under paragraphs (1) - (5) of this subsection.

(d) The requirements of subsection (a) of this section also do not apply if such a determination would interrupt or delay:

- (1) the progress of the individual toward achieving the employment outcome identified in the IPE;
- (2) an immediate job placement; or
- (3) the provision of VR services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

~~[(d)]~~ The requirements of subsection (a) of this section also do not apply if:

~~[(1)]~~ determining the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any customer whom VRD has determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or]

~~[(2)]~~ an immediate job placement would be lost because of a delay in the provision of comparable services and benefits.]

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

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SUBCHAPTER G. CRISS COLE REHABILITATION CENTER

40 TAC §856.84

The rule is proposed under Texas Labor Code, Chapter 352 and Texas Human Resources Code, Chapter 111, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of vocational rehabilitation services.

The proposed rule affects Texas Human Resources Code, Chapter 111, and Texas Labor Code, Chapter 352.

§856.84. *Initial Eligibility.*

(a) To be eligible for vocational rehabilitation (VR) services at the Criss Cole Rehabilitation Center (CCRC), an individual must be:

- (1) at least 18 years of age;
- (2) legally blind or deafblind [~~Deafblind~~];
- ~~{(3) a Texas resident;}~~
- (3) [(4)] a current VR customer; and
- (4) [(5)] referred by a VR counselor for services at CCRC.

(b) Any individual described in subsection (a) of this section shall be subject to a computerized criminal history (CCH) check, and

the results of the CCH will be evaluated as to the individual's eligibility for VR services at CCRC. A risk evaluation must be completed if the CCH check identifies a criminal history. The Agency [TWC] will perform a risk evaluation to include the following factors, but not be limited to the:

- (1) severity of the offense;
- (2) time frame of the offense;
- (3) rehabilitation of the customer; and
- (4) parole and community supervision terms.

(c) A customer [~~Notwithstanding subsection (a)(3) of this section, a non-Texas resident~~] who is receiving services from an entity in another state and who otherwise meets the requirements set out in subsections (a) and (b) of this section may be considered for admission and training on a space-available basis, subject to an agreement between the out-of-state entity and the Agency on payment of cost of services provided to the individual.

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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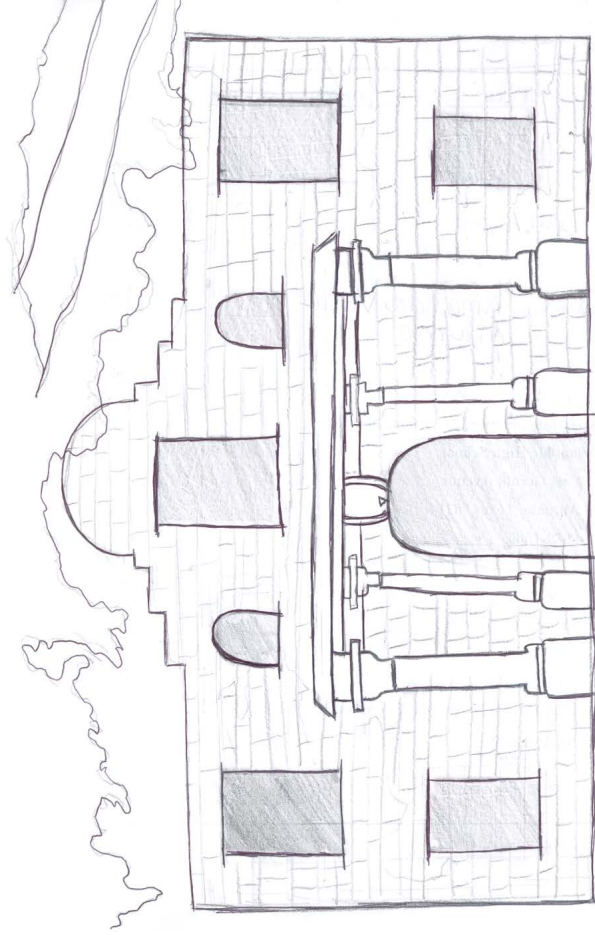
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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.1, §40.3

The Texas Animal Health Commission (TAHC) adopts amendments to §40.1, concerning Definitions, and §40.3, concerning Herd Status Plans for Cervidae. The amendments are adopted without changes to the proposed text as published in the June 17, 2022 issue of the *Texas Register* (47 TexReg 3517). These rules will not be republished.

JUSTIFICATION FOR RULE ACTION

The commission adopts amendments to §40.1 and §40.3 to clarify, correct and update information regarding chronic wasting disease (CWD) management and the CWD Herd Certification Program (HCP).

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions, and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

In May 2019, the United States Department of Agriculture (USDA) updated the CWD Program Standards ("federal standards"). The federal standards were revised to clarify and update acceptable methods for complying with the legal requirements in 9 Code of Federal Regulations Parts 55 and 81. As a participating Approved State CWD Herd Certification Program, the commission is amending the HCP rules to align with revised federal standards or regulations.

The HCP is a voluntary, cooperative surveillance and certification program between the commission, USDA, herd owners, and other affected parties. The purpose of the program is to promote a consistent, national approach in controlling CWD in farmed and captive cervids and preventing the interstate spread of CWD. Participating herds that meet program requirements and have no evidence of CWD advance in status each year for five years, then are certified as low risk for CWD. Certification status, in

addition to compliance with the HCP performance-based regulations and herd status, permits interstate animal movement.

HOW THE RULES WILL FUNCTION

The adopted amendments are necessary to follow federal requirements and maintain Texas' Approved State Program Status. The adopted rules update or add terms used in Chapter 40, including "CWD-Exposed Herd," "CWD-Positive Animal," and "complete physical herd inventory." The amendments to §40.3: require immediate reporting upon discovery of all farmed or captive herds that escape or disappear; remove an exception for lowering a herd status; requires all identification to be visually verified on the animals during an initial inspection and physical herd inspection; and clarifies that one of the animal identifications must be an official form of animal identification approved by USDA. Non-substantive grammatical corrections were made in §40.3(f)(1)(A)(iii) and §40.3(h)(5).

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 17, 2022.

During this period, the commission received comments regarding the proposed rule(s) from 5 commenters, including the Texas Veterinary Medical Association, the National Deer Association, and three individuals. Additionally, prior to adoption, the commission received two written comments, including, one from the Deer Breeders Corporation and one from an individual, and two oral comments from the Deer Breeders Corporation and Texas Deer Association. To the extent the commission could determine, a summary of the comments and the commission's responses follow.

Comment: One commenter opposed the timeframe for the physical herd inspection and recommended the inspections should occur in late February or early March either prior to the third-year anniversary after the initial inspection or following the third-year anniversary after the initial inspection. The commenter provided specific animal husbandry reasons for the suggested timeframes and cited safety concerns for the deer and handlers.

Response: The TAHC disagrees with the commenter's opposition to the timeframe of the physical herd inspections not being specified by rule. The TAHC recognizes there are times of the year that may be safer for handling white-tailed deer. The TAHC also understands animal husbandry and handling practices vary per facility and may differ for white-tailed deer as well as other CWD susceptible species. The commission believes it is best not to limit inspections to February and March and allow inspections at any time of the year that meets a producer's schedule and maintains compliance with the Herd Certification Program. No changes were made as a result of this comment.

Comment: One commenter submitted two written comments that did not indicate support or opposition for the proposed rules. The commenter stated TAHC was proposing multiple amendments to §§40.1 & 40.3, so this is the correct opportunity to incorporate amendments to the applicability of the 8-foot fence requirement for herds enrolled in the Herd Certification Program. The commenter said the 8 feet high fence requirement should apply to all enrolled herds and not just those established since the effective date of the rule in October 2021. The commenter stated this is certainly no time to be negligent about state requirements on fencing that could control the spread of CWD given that 1) CWD has again been found at deer breeding facilities most recently as August 2021, and 2) anthrax has been found in another deer herd in Texas most recently as July 2021.

Response: Although the individual's comments are beyond the scope of the proposed amendments to Chapter 40, the commission will take the recommendations under advisement for future rulemaking. No changes are made as a result of this comment.

Comment: One commenter did not indicate support or opposition for the proposed rules but provided information and data regarding CWD and prion diseases.

Response: No changes were made as a result of the comment.

Comment: The Deer Breeders Corporation (DBC) opposed adoption and stated members who are enrolled in the TAHC's CWD HCP are very concerned with the new rule proposal concerning CWD inspections. DBC stated: the HCP has no benefit or value to the breeder; there is no reason to be in the program other than to move deer out of the state and most states will not take deer from a CWD infected state; and there will be no one left in the TAHC HCP if the proposal to require 100% visual verification of both the visible ear tag and microchip is adopted. DBC stated that 100% visual verification of both identifications is virtually impossible to achieve and expressed concern for the safety of animals and handlers when working bucks. DBC explained most breeder facilities do not allow bucks to be worked through the chute as it is dangerous to the handlers, highly stressful to the deer and can cause pedicle damage ruining the antler growth for life. DBC expressed concern that running bucks through a chute could also result in the animal's death and, tranquilization, which is an alternative to working deer through a chute, would cost thousands of dollars. DBC recommended TAHC consider performing inspections while the breeders are working their doe and fawns through the chute and help revise the HCP with common sense and consideration for deer health. During public comment, DBC stated 100% visual verification is doable if the agency conducts the inspections in phases, over a period of time or allows time for the industry to transition to the use of high-frequency ear tags. However, the commenter stated it would be the end of the program if full inspections were immediately implemented. DBC also recommended adding genetics into the equation to bring back the HCP's gold standard. The commenter asked that CWD-positive herds have an option to test the herd to remove the disease as opposed to depopulation.

Response: The TAHC understands and appreciates that some producers of herds voluntarily enrolled in the HCP may not be able or willing to meet the requirement to visually verify all identification on the animals during the initial inspection and subsequent physical herd inspections. Because of this and the costs associated with visual verification, the commission considered not changing the current requirements or imposing less stringent visual verification requirements. However, those options

were rejected because the alternatives do not or would not meet USDA's minimum requirements of HCP as outlined in 9 C.F.R. §55.23. The commission is required to update rules to maintain Approved State Program Status by the USDA. Refusal to update rules and comply with HCP requirements would result in suspension of the program, which would prevent the movement of any Texas herds in interstate commerce. The TAHC will also, to the extent agency resources and staffing permit, allow physical herd inspections to be conducted at a time that aligns with industry practices for handling animals and meets the requirements of the HCP. This would include allowing a complete physical herd inventory to be completed in phases as long as all herd animals are visually verified within the same status year. Although outside the scope of the proposed rules, the TAHC will take DBC's recommendations regarding utilizing high-frequency identification, adding genetic resistance components, and offering test-out options for positive HCP herds under advisement for future rulemaking. No changes were made as a result of this comment.

Comment: The Texas Deer Association (TDA) opposed adoption and asked for reasonableness and effectiveness in regulation. The commenter stated the hands-on inspection and 100% visual verification is an example where regulation needs to be reasonable. As an alternative, TDA provided an example of visually verifying the external primary identification on all deer in a herd with binoculars and then taking a representative sample for a closer inspection with the expectation of 100% compliance. The commenter also stated the proposed rules were missing information on how to manage CWD-positive herds. TDA recommended requiring the producer of a CWD-positive herd to allow the TAHC access to the property for the sole purpose of live testing the entire herd to determine a prevalence rate and develop a herd plan related to that prevalence rate. The commenter stated we should never slaughter another animal for the purpose of finding out whether it has CWD or how much CWD is within the herd. We should know that before we develop our processes.

Response: Although TDA's alternative for 100% visual verification may be considered for future rulemaking, the TAHC disagrees with the recommendation because the alternative does not meet USDA's minimum HCP requirements as outlined in 9 C.F.R. §55.23. Refusal to update rules and comply with HCP requirements would result in suspension of the program, which would prevent the movement of any Texas herds in interstate commerce. Although outside the scope of the proposed rules, the TAHC will take TDA's recommendations regarding the management of CWD-positive herds under advisement for future rulemaking. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendments to §40.01 and §40.03 within Chapter 40 of the Texas Administrative Code are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The commission is vested by statute, §161.041(a), titled "Disease Control", to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control", the commission must authorize a person, including a

veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.049, titled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The commission by rule shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The Executive Director of the commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.056(a), titled "Animal Identification Program", the commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.060, titled "Authority to Set and Collect Fees", the commission may charge a fee for an inspection made by the commission as provided by commission rule.

Pursuant to §161.061, titled "Establishment", if the commission may establish a quarantine against all or the portion of a state, territory, or country in which a disease listed in rules adopted under Section 161.041. Section 161.061(b), a quarantine established may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. Section 161.061(c), the commission may establish a quarantine to prohibit or regulate the movement of infected animals and the movement of animals into an affected area. Section 161.061(d) allows the commission to delegate its authority to establish a quarantine to the Executive Commissioner.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine", the commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals", the commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary law, the commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the commission.

Pursuant to §161.081, titled "Importation of Animals", the commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The commission by rule may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty", the commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed \$5,000, effective September 1, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 719-0718



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3

The Texas Animal Health Commission (TAHC) in a duly noticed meeting on July 26, 2022, adopted amendments to §51.3, concerning Exceptions. Section 51.3 is adopted with changes to the proposed text as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3207). The change to §51.3(b)(1) makes a correction and replaces the word "Equidae" with "equine". This rule will be republished.

JUSTIFICATION FOR RULE ACTION

The amendment to §51.3 allows an exception to federal and state interstate cattle movement requirements. Cattle moved interstate must be accompanied by a certificate of veterinary inspection (CVI) in accordance with Texas Agriculture Code §161.054, 9 Code of Federal Regulations §86.5, and 4 Texas Administrative Code §51.2(b)(1). Federal regulations allow the movement of cattle without a CVI if the cattle are moved with documentation as agreed upon by animal health officials in the shipping and receiving states. The TAHC is adopting an amendment to §51.3 to waive the CVI requirement for dairy calves if all parties involved execute and comply with the terms and conditions of the modified movement restriction agreement for 1 to 10-day old dairy calves from a single premises of origin. Organizational changes to §51.3 were made to existing language for improved readability. The purpose of the change to §51.3(b)(1) is to correct taxonomic terminology and improve understanding by using the term "equine" consistently.

HOW THE RULES WILL FUNCTION

The amendment to §51.3, Exceptions, provides an exemption in §51.3(b)(2) to the CVI requirement for dairy calves 10 days of age or less if a modified movement restriction agreement is executed between the out-of-state premises of origin and the state of origin animal health official, the Texas premises of destination and the TAHC Executive Director and the Area Veterinarian in Charge (AVIC) of the state of origin and destination. All parties must agree and comply with the terms and conditions in the agreement. The existing CVI exception related to equine in §51.3(b) is reorganized into a paragraph structure and renumbered accordingly. The term equidae was corrected to equine. No substantive changes were made.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended July 3, 2022.

During this period, the TAHC received comments regarding the proposed rule from three commenters, including the Texas Veterinary Medical Association, and two individuals. Additionally, prior to adoption, the commission received one written comment from an individual. A summary of comments relating to the rule and TAHC's responses follow.

Comment: Two commenters, an individual and the Texas Veterinary Medical Association, are in support of the rule amendment.

Response: The TAHC thanks the commenters for the feedback. No changes were made as a result of these comments.

Comment: An individual submitted two written comments, one during and one after the 30-day comment period. The individual commented against allowing a CVI exception for dairy calves 1 to 10 days old to prevent the spread of disease. The commenter stated that TAHC does not need to agree to move cows without documentation as a shipping nor a receiving state. The commenter stated that this is certainly no time to eliminate state requirements to control the spread of disease and cited diseases of concern including SARS-CoV-2, highly pathogenic avian influenza, African swine fever, and anthrax.

Response: The TAHC respectfully disagrees with the commenter. Cattle may be moved between shipping and receiving states or tribes with documentation other than a CVI, as agreed upon by animal health officials in the shipping and receiving states or tribes, in accordance with 9 C.F.R. §86.5(c)(6). The rule amendment aligns with federal regulations that allow the movement of cattle without a CVI. Producers may request

an exemption to the CVI requirement; however, all parties involved must execute and comply with the modified movement restriction agreement. Because the out-of-state premises of origin and the Texas premises of origin must execute a Modified Movement Agreement with the animal health officials from their respective states, the proposed rule will enhance the TAHC's awareness of animal movements into Texas and improve overall animal disease traceability. As required by the rule, the Modified Movement Agreement will include identification, recordkeeping, reporting, inspection, testing and other requirements as may be required by TAHC, USDA or the animal health officials of the shipping state. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendment is authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control", the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication.

Pursuant to §161.043, titled "Regulation of Exhibitions", the commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.047, titled "Entry Power", a commissioner or veterinarian or inspector employed by the commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The commission by rule shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the commission may by rule regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program", the commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identifica-

tion program. Section 161.056(d) authorizes the commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals", the commission by rule may provide the method for inspecting and testing animals before and after entry into the state of Texas. The commission may create rules requiring health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;

(2) Beef breed cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include the test date and results;

(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by an owner-shipper statement;

(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by an owner-shipper statement or to a livestock market by the owner or consigned there and accompanied by an owner-shipper statement;

(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by an owner-shipper statement;

(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by an owner-shipper statement;

(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the commission;

(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection;

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit;

(10) Equine when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months; and

(11) Swine consigned from an out-of-state premise of origin and originate from a Validated and Qualified Herd to a Texas livestock market specifically approved under Title 9, Code of Federal Regulations §71.20.

(b) Exceptions for a certificate of veterinary inspection.

(1) Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the commission. Following release by the veterinarian, equine must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the commission.

(2) Dairy cattle 10 days of age or less are exempt from the certificate of veterinary inspection requirement if the following are met:

(A) the out-of-state premises of origin and the Texas premises of destination execute a Modified Movement Agreement with the Executive Director and the out-of-state animal health official; and

(B) the cattle are moved directly from the out-of-state premises of origin to the Texas premises of destination in compliance with the Modified Movement Agreement. The Modified Movement Agreement includes identification, recordkeeping, reporting, inspection, testing and other requirements as epidemiologically determined by the Executive Director.

(c) Exceptions for an entry permit.

(1) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(2) Poultry that originate from an approved Poultry Commuter Flock;

(3) Cattle that originate from an approved Cattle Commuter Herd;

(4) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;

(5) Sheep and goats consigned from out-of-state and originating from Consistent States (having an active scrapie surveillance and control program); and

(6) Exotic fowl from out of state, except ratites.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mary Luedeker

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0718

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to certain rules in 7 TAC Chapter 3, governing Texas state-chartered banks (state banks) and other banks operating in Texas. The amended rules are adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3849). The amended rules will not be republished.

In particular, the commission adopts amendments to §3.1, concerning private placement of securities by state banks; §3.3, concerning securities and other activities of subsidiaries of state banks; §3.4, concerning foreign banking; §3.21, concerning state bank call reports; §3.22, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of a state bank; §3.24, concerning notice of cybersecurity incident; §3.37, concerning calculation of annual assessment for state banks; §3.44, concerning statements of registration, notices and filings related to foreign bank representative offices; §3.53, concerning asset deposit and pledge requirement applicable to foreign bank branch or agency with nonrelated deposit liabilities; §3.59, concerning foreign bank deposit agreement and conditions; §3.62, concerning foreign bank asset maintenance; §3.91, concerning loan production offices; §3.93, concerning deposit production offices; and §3.111, concerning confidential information.

The adopted amendments arise from rule review conducted pursuant to Texas Government Code, §2001.039, and provide clarity, improve consistency and workability, eliminate unneeded rules, correct or update citations and address certain clerical errors, and maintain consistent formatting within the chapter.

In February 2022, the department issued an advance notice of rule review, seeking informal feedback on the rule review. Notice of the review of 7 TAC Chapter 3 was published in the *Texas Register* on February 18, 2022 (47 TexReg 797). No comments were received in response to that notice. On April 22, 2022, the commission determined that the reasons for initially adopting these rules continue to exist, and readopted 7 TAC Chapter 3, in its entirety, but also stated that certain revisions and amendments may be appropriate, and that such amendments would be proposed at a later date (47 TexReg 2778). These amendments as adopted are discussed below.

The rules in 7 TAC Chapter 3, Subchapter A, govern securities activities and subsidiaries of state banks. A number of provisions in these rules are no longer needed.

Section 3.1 discusses private placements of securities by state banks. Adopted amendments to §3.1(a) correct a clerical error and improve formatting consistency.

Section 3.1(b) states that state banks may not acquire equity securities for which those banks have acted as agent or broker. Broader restrictions on investments in equity securities by state banks exist in Texas Finance Code (Finance Code), §34.101(b)(1). Adopted amendments eliminate §3.1(b) because this subsection is no longer needed.

Section 3.3 discusses securities activities, and other activities of subsidiaries of state banks. The adopted amendment to the

title of §3.3 reflects that this section is not limited to securities activities.

Section 3.3(a) states that state banks may establish or acquire subsidiaries that engage in securities activities subject to certain federal banking regulations that have been repealed without replacement. Adopted amendments to §3.3(a) eliminate that reference because it is no longer applicable.

Section 3.3(b) imposes an investment ceiling on state bank securities subsidiaries. This is redundant of a similar ceiling in Finance Code, §34.103(b). Further, unlike §3.3(b), Finance Code, §34.103(b) provides that the ceiling can be waived by the Texas Banking Commissioner (commissioner). The adopted repeal of §3.3(b) is consistent with the Texas Banking Act's provisions on investment ceilings for state bank subsidiaries.

Section 3.3(d) limits the purchase and retention of equity securities by state banks and state bank subsidiaries. Section 3.3(d)(1) states that a state bank subsidiary must dispose of any equity security acquired for its own account within 90 days after the purchase. Although Texas law has other restrictions on the ownership of equity securities by state banks and state bank subsidiaries, such as Finance Code, §34.101 and §34.103, it does not have this strict divestment deadline. Neither does analogous federal banking law. This restriction should be repealed.

Section 3.3(d)(2) states that a state bank may not purchase, in its discretion as fiduciary or managing agent, any security underwritten, distributed, or issued by the bank's securities subsidiary or any security issued by an investment company advised by the subsidiary. Other applicable law limits a state bank's exercise of discretion as a fiduciary or managing agent where such potential conflicts of interest exist. Given these other limits, this provision is no longer needed. In recognition of this, federal regulations for national banks at 12 CFR §9.12(a) now permit such investment decisions to be made if authorized by applicable law. The adopted amendment to §3.3(d) provides state banks with the same authority.

Section 3.3(e) requires state banks filing notices with the Federal Deposit Insurance Corporation (FDIC) regarding subsidiaries to file copies of those notices with the commissioner. Federal regulations on notices to federal banking regulators relating to bank subsidiaries have changed. Notice to the commissioner prior to a state bank subsidiary being acquired or established or commencing new activities is required by Finance Code, §34.103(b). Adopted amendments to §3.3(e) update the rule to refer to currently applicable federal and Texas notice requirements and clarify requirements for state banks to provide the commissioner with copies of federal filings related to subsidiary activities if those subsidiary-related activities are also being reported to the commissioner under Texas law.

Section 3.4 relates to state banks conducting foreign activity. Adopted amendments to §3.4 change a citation format for consistency.

The rules in 7 TAC Chapter 3, Subchapter B, are general rules governing state banks.

Section 3.21 governs call reports. Adopted amendments to §3.21(a) change citation formats for consistency.

Federal regulations similar to §3.21(f) requiring call reports to be posted in bank lobbies have been repealed in recent years because federal regulators publish call reports of federally insured banks online. Adopted amendments to §3.21(f) follow this trend by eliminating the Texas requirement for a state bank to publicly

post its call reports in its lobby, as long as the bank is federally insured and its call reports are available online, unless the commissioner has specifically ordered the bank to post or otherwise publish its call reports.

Section 3.22 governs insider sales and leases. Finance Code, §33.109, requires prior approval by a disinterested majority of the board of directors of the bank or by the commissioner for sales or leases of bank assets to bank insiders. Section 3.22(c) requires the transaction to be approved by a majority of an ordinary quorum of the board, and requires this quorum to be composed entirely of disinterested directors. Such quorums often cannot be obtained, and this is not consistent with provisions of general Texas corporate law for approval of insider transactions by disinterested directors of Texas non-bank corporations. Adopted amendments to §3.22(c) clarify and improve this provision by applying the normal requirements for approval of insider transactions by disinterested directors of Texas non-bank corporations to state banks.

Adopted amendments to §3.22(d) also clarify the requirements for approval of an insider transaction by a disinterested majority of the board of a state bank in conformity with general Texas corporate law.

Additional adopted amendments to §3.22(d) update the reference to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 842 from FASB ASC Topic 840 pursuant to recent changes to FASB ASC.

Section 3.24 requires state banks to provide the department with notice and certain information regarding certain computer-security incidents. This rule became effective in 2020. Analogous federal computer-security incident notification rules that apply to all state banks became effective in 2022. The department proposed following these new federal requirements for incident notifications by state banks to the department rather than continuing to impose state requirements that are different from these new federal requirements.

Section 3.37 discusses state bank annual assessment calculations. As §3.37(b) explains, every year the base assessment table included in §3.37(a) is adjusted by the department based on inflation statistics and published on the department website. The department recommends amendments to the base table in §3.37(a) to the commission at least every four years and if approved, the base table and the effective date are adjusted. For these reasons, the statement in §3.37(a) about the effective date for the unadjusted values in the base table is accurate even though this date has passed. However, to provide further clarification, the annual update of the table can be explained in the base table itself along with the expiration date for that table and information on where to find the current version of the table on the department's website. Adopted amendments to §3.37(a) remove the language about the effective date for the values in the base table from the rule and amend the base table itself to include this and other useful information.

The rules in 7 TAC Chapter 3, Subchapter C, govern foreign bank branches, agencies, and offices. Section 3.44 requires foreign bank representative offices to file statements, notices, and other filings with the commissioner. The adopted amendment to §3.44(b) corrects the reference to §3.44(c)(2) for rules on applications by foreign banks with Texas state branches or agencies to establish new representative offices in Texas.

The rules in 7 TAC Chapter 3, Subchapter D, govern the pledge and maintenance of assets by foreign banks with Texas state

branches or agencies. Section 3.53(c) purports to override the ordinary provisions of the Uniform Commercial Code (UCC) for perfecting a security interest in the assets foreign banks must pledge to the commissioner. However, the commission may lack legal authority to override the UCC through rulemaking, so this provision may not be effective. The department therefore currently obtains a perfected, first-priority security interest in the pledged assets under the UCC and other applicable law. Adopted amendments to §3.53(c) reflect this policy.

Section 3.53(d) discusses the calculation and timing for the deposit of the assets that a foreign bank is pledging to the commissioner. A foreign bank branch or agency that does not carry deposit liabilities may not need to pledge assets, as §3.54 states. Adopted amendments to §3.53(d) clarify and confirm that the asset pledge only needs to be made before deposit liabilities are accepted by a foreign bank branch or agency, rather than being made upon the opening of a branch or agency that is not accepting deposit liabilities at opening but may later do so, and confirm that the deposit amount should continue to be calculated based on projections of total nonrelated liabilities at one year after commencement of such deposit-related operations.

Section 3.59 provides requirements for the deposit agreement between the foreign bank and the third-party depository holding the assets pledged to the commissioner by the foreign bank. Section 3.59(d) states that the commissioner is deemed to have a security interest in the pledged assets. However, this provision may not be effective. Adopted amendments to §3.59(d) therefore require foreign banks to ensure that the commissioner does have a perfected, first-priority security interest in the pledged assets.

Section 3.62 relates to asset maintenance requirements for foreign banks. Finance Code, §204.114, provides the commissioner with sole discretion in setting these requirements, and §3.62(b) then lists various factors that the commissioner may consider. Adopted amendments to §3.62(b) remove these discretionary factors because these do not need to be enumerated.

The rules in 7 TAC Chapter 3, Subchapter E, govern banking houses and other facilities, such as loan production offices (LPOs) and deposit production offices (DPOs).

Section 3.91 applies to LPOs. It states that LPOs may not engage the public in the business of banking, including making loans, receiving deposits, and paying withdrawals, drafts, or checks. Continuing, §3.91(a) states "deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method." Adopted amendments clarify that deposits or withdrawals via mail, electronic transfer, or similar remote methods cannot be done with the LPO and instead must be done with the bank's home office or branch office.

Section 3.93 applies to DPOs. It states that DPOs may not engage the public in the business of banking, including making loans, receiving deposits, and paying withdrawals, drafts, or checks. Continuing, §3.93(a) states "deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method." Adopted amendments clarify that deposits or withdrawals via mail, electronic transfer, or similar remote methods cannot be done with the DPO and instead must be done with the bank's home office or branch office.

The rules in 7 TAC Chapter 3, Subchapter F, govern access to information.

Finance Code, §31.301(a)(1), states that information obtained by the department in any manner, including application, may be confidential. Adopted amendments to §3.111(b)(2) clarify that information provided by an applicant or an applicant's service provider may be confidential, the same as information provided by a financial institution that is already chartered or licensed. Additional adopted amendments to §3.111(b)(2) correct a clerical error.

Pursuant to Finance Code, §31.301(a), the commission has enacted rules to permit the commissioner to waive confidentiality for information received from or relating to a failed financial institution. Adopted amendments to §3.111(e)(3)(B) clarify that such waiver is in the sole discretion of the commissioner and not subject to appeal or other challenge.

Finance Code, §36.224 and §186.224, state that records obtained from financial institutions that have been liquidated are not government records for any purposes, including requests for public information. Adopted amendments to §3.111(e)(3)(B) also confirm that records obtained from financial institutions that have failed are not government records for any purposes, regardless of whether the institution has been formally liquidated under Finance Code, Chapters 36 or 186.

Comments supporting the adopted amendments were received from Independent Bankers Association of Texas (IBAT). IBAT expressed support for the amendments generally, noting that they "appear to be a good 'clean-up' of existing rules and, as such, are very helpful." IBAT further commented:

With regard to 7 TAC §3.91 and §3.93, it is our understanding that the amendments do not prevent a state chartered bank from establishing an ATM (remote service unit) at the same location as a deposit production office (DPO) or a loan production office (LPO). ATMs are not themselves branches, and the fact that they offer both withdrawal of funds and remote deposit capture of deposits does not violate the limitations expressed in these rules. Permitting ATMs to be combined with DPOs and LPOs would also be consistent with the powers of national charters and thus clearly permitted under parity principles. The authority for such combination and the fact such a combination does not result in a branch is discussed in the OCC Branches and Relocations handbook at page 10.

The Department appreciates and agrees with IBAT's comments.

Notice of the adopted amendments was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule amendments have the potential to affect market competition. The Division approved the amendments without further revision.

SUBCHAPTER A. SECURITIES ACTIVITIES AND SUBSIDIARIES

7 TAC §§3.1, 3.3, 3.4

The amendments are adopted under Finance Code, §31.003(a), which authorizes the commission to adopt rules to administer Subtitle A of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapters 33 and 34 of the Finance Code are affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Finance Commission of Texas

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SUBCHAPTER B. GENERAL

7 TAC §§3.21, 3.22, 3.24, 3.37

The amendments are adopted under Finance Code, §31.003(a), which authorizes the commission to adopt rules to administer Subtitle A of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Chapters 31 and 33 of the Finance Code are affected by the adopted amendments.

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 19, 2022.

TRD-202203134

Catherine Reyer

General Counsel

Finance Commission of Texas

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Proposal publication date: July 8, 2022

For further information, please call: (512) 475-1301



SUBCHAPTER C. FOREIGN BANK BRANCHES, AGENCIES AND REPRESENTATIVE OFFICES

7 TAC §3.44

The amendments are adopted under Finance Code, §201.003(a), which authorizes the commission to adopt rules to administer Subtitle G of Title 3 of the Finance Code. As required by Finance Code, §201.003(b), the commission considered the need to coordinate with applicable federal law, promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of Texas state banks with regard to other

depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system, and allow for economic development in this state.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Catherine Reyer

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SUBCHAPTER D. PLEDGE AND MAINTENANCE OF ASSETS BY FOREIGN BANK LICENSED TO MAINTAIN TEXAS STATE BRANCH OR AGENCY

7 TAC §§3.53, 3.59, 3.62

The amendments are adopted under Finance Code, §201.003(a), which authorizes the commission to adopt rules to administer Subtitle G of Title 3 of the Finance Code. As required by Finance Code, §201.003(b), the commission considered the need to coordinate with applicable federal law, promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of Texas state banks with regard to other depository institutions consistent with the safety and soundness of Texas state banks and the Texas state bank system, and allow for economic development in this state.

Chapter 204 of the Finance Code is affected by the adopted amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §§3.91, §3.93

The amendments are adopted under Finance Code, §31.003 and §201.003, which authorize the commission to adopt rules to administer Subtitles A and G of Title 3 of the Finance Code. As required by Finance Code, §31.003(b) and §201.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Catherine Reyer

General Counsel

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For further information, please call: (512) 475-1301



SUBCHAPTER F. ACCESS TO INFORMATION

7 TAC §3.111

The amendments are adopted under Finance Code, §31.003, §181.003, and §201.003, which authorize the commission to adopt rules to administer Subtitles A, F and G of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), §181.00(b), and §201.003(b), the commission considered the need to promote a stable banking and trust services environment, provide the public with convenient, safe, and competitive banking and trust services, preserve and promote the competitive parity of state banks and trust companies consistent with the safety and soundness of state banks trust companies and the state banking and trust company system, and allow for economic development within this state.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Catherine Reyer

General Counsel

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For further information, please call: (512) 475-1301



CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.107

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner (agencies), adopts new §5.107, concerning Employee Leave Pools. The new rule is adopted without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3856). The new rule will not be republished.

In accordance with §661.002 and §661.022, the new rule as adopted acknowledges, through formal rulemaking, the existence of the agencies' respective family leave pools and sick leave pools. The adopted new rule sets forth the purpose of each leave pool, designates the Commissioner of each finance agency as the pool administrator for their respective finance agency's leave pools, and requires the Commissioner to maintain operating procedures consistent with the requirements of the proposed new rule and relevant laws governing operation of the pools.

No comments were received regarding the new rule.

The new rule is adopted under the authority of Government Code, §661.002 and §661.022. Section 661.002 requires that the governing body of each state agency adopt rules and prescribe procedures relating to the operation of an agency's sick leave pool. Section 661.022 requires the governing bodies of state agencies to adopt rules to create and administer an employee family leave pool.

The adopted new rule affects Government Code, Chapter 661.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Catherine Reyer

General Counsel

Finance Commission of Texas

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For further information, please call: (512) 475-1301



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER A. GENERAL

7 TAC §17.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to certain rules in 7 TAC Chapter 17, governing Texas state-chartered trust companies (trust companies). The amended rules are adopted without changes to the proposed

text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3857). The amended rules will not be republished.

In particular, the commission adopts amendments to §17.3, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of a trust company.

Section 17.3 governs insider sales and leases. Texas Finance Code (Finance Code), §183.109, requires prior approval by a disinterested majority of the board of directors of the trust company or by the commissioner for sales or leases of trust company assets to trust company insiders. Section 17.3(c) requires the transaction to be approved by a majority of an ordinary quorum of the board, and requires this quorum to be composed entirely of disinterested directors. Such quorums often cannot be obtained, and this is not consistent with provisions of general Texas corporate law for approval of insider transactions by disinterested directors of Texas non-trust company corporations. The adopted amendments to §17.3(c) clarify and improve this provision by applying the normal requirements for approval of insider transactions by disinterested directors of Texas non-trust company corporations to trust companies.

The adopted amendments to §17.3(c) also make non-substantive modifications to the language of the rule to match the analogous rule for Texas state-chartered banks at §3.22.

The adopted amendments to §17.3(d) also clarify the requirements for approval of an insider transaction by a disinterested majority of the board of a trust company in conformity with general Texas corporate law.

Under 7 TAC §21.24(c)(3), certain family trust companies may be exempted from certain restrictions of Finance Code, §183.109(a), regarding transactions with management or affiliates. None of these existing exemptions for family trust companies will be negated or affected by the adopted amendments.

Additional adopted amendments to §17.3(d) update the reference to Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 842 from FASB ASC Topic 840 pursuant to recent changes to FASB ASC.

The department received no comments regarding the adopted amendments.

Notice of the adopted amendments was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule amendments have the potential to affect market competition. The Division approved the amendments without further revision.

The amendments are adopted under Finance Code, §181.003, which authorizes the commission to adopt rules to administer Subtitles F of Title 3 of the Finance Code. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2022.



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) adopts amendments to §85.202 (relating to Filing of New Application), §85.301 (relating to Filing of New Application), §85.420 (relating to Purchase Transactions), §85.421 (relating to Consumer Information), §85.422 (relating to Unclaimed Funds), and §85.601 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §§85.202, 85.301, 85.420 - 85.422, and §85.601 without changes to the proposed text as published in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3859). The rules will not be republished.

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops. In general, the purpose of the rule changes to 7 TAC Chapter 85, Subchapter A is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. In March 2022, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC received one informal comment on the advance notice. Notice of the review of 7 TAC Chapter 85, Subchapter A was published in the *Texas Register* on April 1, 2022 (47 TexReg 1701). The commission did not receive any official comments in response to the notice published in the *Texas Register*.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Amendments to §85.202 update requirements for filing a new pawnshop license application. Currently, §85.202(a)(1)(A)(ii) requires a pawnshop license application to identify a "responsible person" who is responsible for day-to-day operations at one or more locations, and must be an individual with an ownership interest, a licensed pawnshop employee, or an applicant for a pawnshop employee license. The commission and the OCCC believe that it is unnecessary to require pawnshops to identify an owner or licensed pawnshop employee as a responsible person. Pawnshops are required to separately identify owners and principal parties under §85.202(a)(1)(B), and licensing of pawnshop employees is now optional under Texas Finance Code, §371.101 (as amended by HB 1442 in 2019). The adoption replaces the "responsible person" requirement in §85.202(a)(1)(A)(ii) with a

requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment will enable pawnshops to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each pawnshop lists an individual who can be contacted about compliance issues. In addition, an amendment to §85.202(a)(2)(A)(v) removes language suggesting that pawnshop license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

An amendment to §85.301 removes language in §85.301(2)(B) suggesting that pawnshop employee license applicants send fingerprints directly to the OCCC. This is similar to the change to §85.202(a)(2)(A)(v) described in the previous paragraph.

An amendment to §85.420 requires pawnshops to maintain copies of certain agreements with local law enforcement. Under Texas Finance Code, §371.182, the OCCC may designate a reasonable hold period during which a pawnshop may not sell goods acquired and offered for sale. Currently, §85.420(b) provides a general hold period of 20 days, but allows a reduced hold period if the pawnshop enters a written agreement with local law enforcement for a reduced period. An amendment to §85.420(b)(2) adds language specifying that if a pawnshop holds purchased items for less than 20 days under an agreement with local law enforcement, then the pawnshop must maintain a copy of the agreement that authorizes the reduced hold period. This amendment is intended to help ensure that OCCC can verify compliance with the requirements for holding purchased items.

Amendments to §85.421 update requirements for providing information to consumers. Under Texas Finance Code, §371.183, the commission may adopt rules requiring pawnshops to display materials provided by the OCCC that are designed to: (1) inform a consumer of the duties, rights, and responsibilities of parties to a pawn transaction; and (2) inform and assist a robbery, burglary, or theft victim. To implement this requirement, the OCCC has prepared a consumer brochure titled "Pawn Facts," which is available on the OCCC's website and may be ordered by pawnshops. Currently, §85.421(a) states that the OCCC will provide each pawnshop a display and printed materials that must be placed in a location clearly visible to the consumer, and requires the pawnshop to refill the display. An amendment to §85.421(a) removes language suggesting that the OCCC will provide each pawnshop with a display and printed materials at the time of initial licensing. The amended language will still provide that pawnshops may request copies from the OCCC, or may print copies from the OCCC's website. This amendment will maintain flexibility for pawnshops while reducing the cost for the OCCC to send printed materials and displays.

Amendments to §85.422 make technical changes relating to the escheat of unclaimed funds. Amended text in §85.422(3) reflects that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another amendment adds a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Amendments to §85.601 relate to the OCCC's review of the criminal history of a pawnshop applicant or licensee. The OCCC is authorized to review criminal history of pawnshop applicants and licensees (as well as pawnshop employee applicants and li-

censees) under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The amendments to §85.601 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Amendments throughout subsections (c) and (f) of §85.601 implement these statutory changes from HB 1342. Other amendments to §85.601 include technical corrections, clarifying changes, and updates to citations.

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be October 1, 2022.

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS DIVISION 2. PAWNSHOP LICENSE

7 TAC §85.202

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.301

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matthew Nance

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Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



DIVISION 4. OPERATION OF PAWNSHOPS

7 TAC §§85.420 - 85.422

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matthew Nance

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For further information, please call: (512) 936-7660



DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.601

The rule amendments are adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371 (the Texas Pawnshop Act). The amendments to §85.421 are adopted under Texas Finance Code, §371.183, which authorizes the commission to adopt rules requiring a pawnshop to display consumer materials. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

The Texas Education Agency (TEA) adopts an amendment to §100.1010, concerning performance frameworks for open-enrollment charter schools. The amendment is adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3214) and will not be republished. The amendment adopts in rule the *2021 Charter School Performance Framework (CSPF) Manual*, which is updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

REASONED JUSTIFICATION: Section 100.1010 was adopted effective September 18, 2014, and was last amended effective March 8, 2022. The rule is issued under Texas Education Code, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks (charter schools measured under standard accountability and charter schools measured under alternative education accountability) consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The adopted amendment replaces the *2020 CSPF Manual* with the *2021 CSPF Manual*. The 2021 version of the manual presents no significant changes from 2020.

Throughout the manual, language is revised with clarifying edits such as updated dates, references to financial accountability indicators, and language describing the waiver of accountability requirements. In addition, indicator 3I, Appropriate Handling of Secure Assessment Materials, is updated to define "meets expectations" and "does not meet expectations." The indicator is not applicable for 2021.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 3, 2022, and ended July 5, 2022. Following is a summary of public comments received and agency responses.

Comment: The Texas Association of School Boards, Texas Association of School Administrators, and Texas School Alliance recommended the restoration of the Academic Standard and indicators from the Operational Standard previously removed due to the ongoing COVID-19 waiver. The recommendation included using available data points and renumbering the indicators.

Response: The agency disagrees and provides the following clarification. TEA received approval from the U.S. Department of Education on April 6, 2021, to waive statewide assessment and accountability requirements under the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, for the 2020-2021 school year. TEA administered a statewide assessment in school year 2020-2021, but TEA continued to suspend ratings for local education agencies (LEAs) and their campuses.

TEA acknowledged the importance of gathering data and making it available to the public and educators to understand learning loss and provide necessary supports. However, due to the disruptions of the pandemic, the use of the data as a tool to assess student growth was hindered. The CSPF is a tool intended to provide education stakeholders with a snapshot of performance. Just as the A-F ratings have become less useful in giving an indicator of LEA performance during the turmoil of the pandemic, the CSPF would provide a snapshot without context if the removed information were provided for 2021. The data related to these indicators has been gathered, as the public comment acknowledges, and made available to the public.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

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 17, 2022.

TRD-202203075

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 6, 2022
Proposal publication date: June 3, 2022
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

**PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD**

**CHAPTER 153. RULES RELATING TO
PROVISIONS OF THE TEXAS APPRAISER
LICENSING AND CERTIFICATION ACT**

**22 TAC §§153.1, 153.5, 153.8, 153.9, 153.11, 153.15, 153.17,
153.20 - 153.24, 153.26, 153.28, 153.40**

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §§153.1, Definitions; 153.5, Fees; 153.8, Scope of Practice; 153.9, Applications; 153.11, Examinations; 153.15, Experience Required for Licensing; 153.17, License Renewal; 153.20, Guidelines for Revocation, Suspension, Denial of License; Probationary License; 153.21, Appraiser Trainees and Supervisory Appraisers; 153.22, Voluntary Appraiser Trainee Experience Reviews; 153.23, Inactive Status; 153.24, Complaint Processing; 153.26, Identity Theft; 153.28, Peer Investigative Committee Review; and 153.40, Approval of Continuing Education Providers and Courses. The amendments are adopted following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments are adopted without changes to the proposed text as published in the May 20, 2022 issue of the *Texas Register* (47 TexReg 2991). These rules will not be republished.

The amendments to §153.1 move a definition from §153.40, align the language more closely with Appraisal Qualifications Board (AQB) definitions, and add a definition for the recently AQB adopted PAREA program. The amendments to §153.5 remove outdated fees, clarify the applicability of application fees to reinstatements, increase the fee for voluntary experience reviews, and clarify the applicability of online convenience fee required by the Department of Information Resources.

The amendment to §153.11 provides the examination provider additional discretion in determining the method of accommodation.

The amendments to §153.15 consolidate redundant requirements for new applicants and existing license holders seeking to upgrade their license, add references to the PAREA program and instruct how this experience may be submitted to TALCB, and outline contingent approval may be granted upon completion of additional education, experience, or mentorship.

The amendments to §153.17 remove sections now obsolete since the implementation of an online submission system.

The amendments to §153.20 clarify the guidelines apply to disciplinary action and are not limited to revocation and suspension,

remove a redundant section, and reflect changes to TALCB division names.

The amendments to §153.21 alter the progress monitoring program required of supervisory appraisers with 4-5 trainees, in accordance with AQB Criteria. Trainees of supervisory appraisers that fall into this category no longer are required to submit their work product for review as specified in §153.22. TALCB will require the applicable supervisory appraisers to submit a progress monitoring plan for his or her trainees and keep progress monitoring reports subject to TALCB inspection for a specified period of time. The amendments also update references to distance education in accordance with updates to the AQB's Criteria.

The amendments to §153.22 clarify that an interested applicant, not just trainees, may apply for an appraiser experience review.

The amendment to §153.23 removes a reference to an outdated fee. The amendments to §153.24 reflect changes to TALCB division names, remove references to former processes, and provide for the Commissioner to designate to sign an agreed resolution on his or her behalf. The proposed amendments to §153.26 reflect renumbered sections in §153.20.

In §153.28, the amendments further reflect current investigative process.

The amendments to §153.40 remove redundant definitions, and those moved to §153.1 remove surplus fee information and references to outdated processes.

The Board received three comments, two from the same individual on behalf of himself and the other on behalf of his affiliated organization. All comments were in support of the proposed changes, and the two comments from the same individual offered alternative language addressing references to PAREA within the rule. The Education and Licensing Committee considered the comments offering alternative language and determined the proposed language offered greater flexibility to address potential changes from the Appraisal Qualifications Board related to the PAREA program. Thus, the committee recommended no changes to the language as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202203143
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 8, 2022
Proposal publication date: May 20, 2022
For further information, please call: (512) 936-3652

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES SUBCHAPTER F. DIABETES REGISTRY

25 TAC §61.91

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §61.91, concerning Diabetes Mellitus Glycosylated Hemoglobin Registry. The repeal of §61.91 is adopted without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3398). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal of §61.91 is necessary to implement Senate Bill (S.B.) 970, 87th Legislature, Regular Session, 2021, which repealed Texas Health and Safety Code, Chapter 95, Subchapter B, Diabetes Mellitus Registry. S.B. 970 removed the requirement for a diabetes registry.

The registry was established as a pilot program in accordance with House Bill (H.B.) 2132, 80th Legislature, Regular Session, 2007, and H.B. 1363, 81st Legislature, 2009. DSHS coordinated with the San Antonio Metropolitan Health District to establish the pilot registry.

S.B. 510, 82nd Legislature, Regular Session, 2011, amended Chapter 95 by adding Subchapter B, Diabetes Mellitus Registry, to make public health district participation in the diabetes mellitus registry voluntary and designated a public health district solely responsible for the cost of establishing and administering the registry program in their district. As a result, no data has been submitted since 2011.

COMMENTS

The 31-day comment period ended July 11, 2022.

During this period, DSHS did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The 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 18, 2022.
TRD-202203081

Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: September 7, 2022
Proposal publication date: June 10, 2022
For further information, please call:(512) 776-2834

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.32

The General Land Office (GLO) adopts an amendment to 31 Texas Administrative Code (TAC) §15.32 relating to Certification Status of the Cameron County Dune Protection and Beach Access Plan (Plan) and Erosion Response Plan (ERP). Cameron County is making minor amendments to its Plan and ERP to correct an error in the current versions of these documents. The GLO adopts new subsection 15.32(f) to certify the amended Plan and ERP as consistent with state law. The rule amendment was published in the July 22, 2022 *Texas Register* (47 TexReg 4262) and will not be republished.

BACKGROUND OF THE AMENDMENTS

On June 21, 2022, the Cameron County Commissioners Court approved minor amendments to Section IV.A.6 of its Plan and to Section 5.3.1.(2)(i) of its ERP. The amendments were submitted to the GLO on July 1, 2022. As provided in 31 TAC §15.3(o), the GLO must grant or deny certification of an ERP or amendments to local government dune protection and beach access plans. The GLO finds that these amendments are consistent with state law.

The sections of the Plan and the ERP Cameron County is amending were previously certified as a variance from 31 TAC §§15.5(b)(3) and 15.6(f)(3) to allow minimal impervious cover outside the footprint of a habitable structure in eroding areas, using concrete or another impervious surface for specific purposes so long as its area does not exceed 5% of the footprint of the habitable structure. This variance allowed the County to authorize the construction of concrete curbing that is utilized to create a border and to hold brick pavers in place. Since Cameron County is one of the windiest and driest areas along the Texas coast, increased sediment transport of sand means that stabilization of pervious materials as listed in the ERP may necessitate concrete curbs. The current version of the Plan and ERP specify that the curbs must be no wider than six inches and no more than ten inches high. However, it is now evident that curb manufacturing industry standards require a height limit of twelve inches, not ten inches. The current ten-inch limit was required by the County in its prior Plan amendment in error and should have been the industry standard of twelve inches. As a result, Cameron County is now making these amendments to correct the error, which appears in the Plan and the ERP. The GLO previously found that the dry environment coupled with the enhanced protective standards adopted in the ERP

ensure the variance is as protective as current rules since the allowances have appropriately limited the authorized uses, and the percentage of impervious surfaces allowed, and does not include allowances for any slabs. The increase in height limit by two inches does not change GLO's analysis or conclusion.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Melissa Porter, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule. Ms. Porter has determined that the amendment will save money since curbs made to industry-standard size are less expensive than curbs made to a custom size. Ms. Porter has also determined that for each year of the first five years the amendments are in effect, there will be no impacts to the local economy.

Ms. Porter has determined that there will be no fiscal implications to the local government or additional costs of compliance for large and small businesses or individuals resulting from the amendment to the Plan and ERP. GLO has determined that the rulemaking will have no adverse local employment and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Porter has determined that the public will benefit from the amendment since the use of industry-standard size curbs costs less than the use of custom-made curbs. The difference in size between the six by ten-inch curbs and the six by twelve-inch curbs is minimal, and the previous analysis of public benefit has not changed because of it.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment is under Texas Natural Resources Code §§61.011, 61.015(b), 61.070, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and have access to public beaches, and certification of local government beach access and use plans as consistent with state law. The amendment does not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the amendments do not affect private real property in a manner that requires real

property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution.

The GLO has determined that the rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this rulemaking. Since the rule simply certifies the amendments to Cameron County's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The rule amendment does not create, limit, or repeal existing agency regulations, but rather certifies the amendments to the Plan and ERP as consistent with state law. The rule does not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the amendments would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The amendments are expected to improve environmental protection and safety and to reduce public expenditures.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §§505.11(a)(1)(J) and 505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

PUBLIC COMMENT

No comments were received during the comment period for this rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §§61.011, 61.015(b), and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, and 63.121 are affected by the amendment.

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 22, 2022.

TRD-202203147

Mark A. Havens

Deputy Land Commissioner Chief Clerk

General Land Office

Effective date: September 11, 2022

Proposal publication date: July 22, 2022

For further information, please call: (512) 475-1859



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.16

The Comptroller of Public Accounts adopts new §3.16, concerning delinquent taxpayer financial records; information exchange, with changes to the proposed text as published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3659). The rule will be republished. The new section implements House Bill 1258, 87th Legislature, 2021, which enacted Tax Code, §111.025 (Delinquent Taxpayer Financial Records).

Subsection (a) provides definitions. Paragraphs (1) and (2) define "account" and "account owner record" using the definitions given in Tax Code, §111.025.

Paragraph (3) defines "comptroller's agent." Tax Code, §111.025 uses the term but does not define it. The comptroller adopts this definition to make the section easier to read and to memorialize that the comptroller will contract with a third-party vendor to facilitate the exchange of information with financial institutions as provided in §111.025(h).

Paragraph (4) defines the term "data match." Tax Code, §111.025 uses the term but does not define it. The comptroller adopts this definition to explain the process during which the comptroller will use the information financial institutions provide about accounts owned by delinquent taxpayers. The comptroller amends the proposed definition to add the article "a" before the phrase "delinquent taxpayer's tax debt."

Paragraphs (5), (6), and (7) define the terms "delinquent taxpayer," "financial institution," and "inquiry file" using the definitions given in Tax Code, §111.025.

Subsection (b) describes the exchange of information between the comptroller and financial institutions. The subsection incorporates the limitation in Tax Code, §111.025(d) that the comptroller and its agent may only ask a financial institution to exchange information once each quarter.

Paragraphs (1) and (2) explain the two methods of exchanging information - the matched accounts method and the all accounts method - based upon the description of these two methods in Tax Code, §111.025(b).

Paragraph (3) implements the requirement in Tax Code, §111.025(c) that a request for information from the comptroller or its agent must be made in a manner that is compatible with the financial institution's data processing system.

Subsection (c) restates Tax Code, §111.025(e), which provides that a financial institution may not notify an account holder when it exchanges information with the comptroller or the comptroller's agent.

Subsection (d) addresses confidentiality, restating the limitation in Tax Code, §111.025(f) that the comptroller, its agent, and financial institutions may only use information obtained during an exchange of information for the purpose of performing a data match. Subsection (d) also memorializes the statement in Tax Code, §111.025(f) that the comptroller, its agent, and a financial institution must return, destroy, or erase information obtained during an exchange of information. For consistency, and to ensure compliance, subsection (d) provides a deadline by which the information must be returned, destroyed, or erased, which is the completion of the data match. Finally, subsection (d) expands on the statutory limitation on the use of account owner records, explaining that the comptroller will only use information obtained from a financial institution under this section to collect delinquent taxes and not for any other debt collection activities on behalf of the State.

Subsection (e) restates Tax Code, §111.025(g), which provides that a financial institution is not liable for any good faith actions it takes to comply with this section.

Subsection (f) provides that levies issued during a data match are made within the statutory framework established by Tax Code, Chapter 111.

Subsection (g) restates Tax Code, §111.025(i), which provides that a suit to enforce this statute must be brought by the Attorney General in the Travis County district courts.

The comptroller received comments regarding adoption of the amendment from Stephen Scurlock, Director, Government Relations, Independent Bankers Association of Texas (IBAT). IBAT believes that the proposed rule accurately tracks and appropriately implements Tax Code, §111.025.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and Tax Code, §111.025(j), which gives the comptroller authority to adopt rules to implement the section.

This section implements Tax Code, §111.025 (Delinquent Taxpayer Financial Records).

§3.16. Delinquent Taxpayer Financial Records; Information Exchange.

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

(1) Account--A demand deposit account, checking or negotiable order of withdrawal account, savings account, time deposit account, or money market mutual fund account.

(2) Account owner record--A record a financial institution uses to report account owner information, including:

(A) an account holder's name, social security number, or federal employer identification number; and

(B) the account balance and account type.

(3) Comptroller's agent--A third-party vendor with whom the comptroller contracts to facilitate the exchange of information with a financial institution.

(4) Data match--The process by which the comptroller uses account holder information provided by a financial institution to secure payment of a delinquent taxpayer's tax debt. A data match begins when a delinquent taxpayer's case is created by the Enforcement Division, includes the levy of funds from a delinquent taxpayer's account, and ends 30 days after the delinquent taxpayer's case is closed by the Enforcement Division.

(5) Delinquent taxpayer--A person who at the time of a data match request under subsection (b) of this section is delinquent in a tax or fee administered by the comptroller.

(6) Financial institution--

(A) A depository institution, as defined by Federal Deposit Insurance Act (12 U.S.C. §1813(c)), Section 3(c);

(B) a federal credit union or state credit union, as those terms are defined by Federal Credit Union Act (12 U.S.C. §1752), Section 101; or

(C) the agent of an entity described by subparagraph (A) or (B) of this paragraph.

(7) Inquiry file--An electronic file sent by the comptroller or the comptroller's agent to a financial institution that contains a record of delinquent taxpayers.

(b) Exchange of information. Each calendar quarter, a financial institution doing business in this state shall exchange information with the comptroller or the comptroller's agent as provided in this subsection. The comptroller and the comptroller's agent may not ask a financial institution to exchange information more than once each calendar quarter.

(1) Matched accounts method. No later than 45 days after the date the comptroller or the comptroller's agent provides the inquiry file to a financial institution, the financial institution must submit to the comptroller or the comptroller's agent an electronic file listing all of the account owner records of the accounts owned at the financial institution by each delinquent taxpayer identified in the inquiry file.

(2) Optional method of reporting: all accounts method. In lieu of exchanging information using the matched accounts method, a financial institution may submit to the comptroller or the comptroller's agent an electronic file listing all of the financial institution's account owner records for all open accounts. The comptroller or the comptroller's agent will create an electronic file listing all account owner records for the accounts owned at the financial institution by delinquent taxpayers.

(3) Compatibility. The exchange of information shall be performed in a manner that is compatible with the data processing system of the financial institution.

(c) Notification of account holders. A financial institution may not notify an account holder that the financial institution has exchanged account holder information with the comptroller or the comptroller's agent as provided in subsection (b) of this section.

(d) Confidentiality. Information provided by or to a financial institution, the comptroller, or the comptroller's agent for the purpose of performing a data match is confidential and may not be used for any purpose or disclosed to any person except as necessary to perform a data match. The financial institution, the comptroller, and the comptroller's agent shall return, destroy, or erase any information obtained after completion of the data match. Information collected from a finan-

cial institution pursuant to this section is available for the collection of delinquent taxes only and is not available for other debt collection activities undertaken by the state.

(e) Liability of financial institutions for disclosure of information. A financial institution is not liable to any person for disclosing information to the comptroller under this section or for any other action that the financial institution takes in good faith to comply with this section.

(f) Due process. A statutory levy executed during a data match is subject to the statutory procedures and due process protections of Tax Code, §111.021 (Notice to Holders of and Levy Upon Assets Belonging to Delinquent).

(g) Suit to enforce exchange of information. A suit to enforce this section must be brought by the attorney general in the name of the state. Venue for the suit is in Travis County.

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 18, 2022.

TRD-202203101

Jennifer Burleson

Director, Tax Policy Division

Comptroller of Public Accounts

Effective date: September 7, 2022

Proposal publication date: June 24, 2022

For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.3, §141.5

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter A, §141.3 and §141.5 concerning general provisions. The rules are adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3235). The rules will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules and to correct grammatical errors.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §508.036, §508.0441, §508.045 and §508.047 Government Code. Section 508.036(b) requires the Board to adopt rules governing the decision-making processes of the Board and parole panels. Section 508.0441(b) requires the Board to develop and implement a policy, which clearly defines when a Board member or parole commissioner

should disqualify themselves from voting on a parole decision or the revocation of parole or mandatory supervision. Section 508.045(c) authorizes parole panels with the authority to grant, deny, or revoke parole, revoke mandatory supervision, and conduct parole revocation and mandatory supervision revocation hearings. Section 508.047 requires the members of the Board to meet at least once in each quarter of the calendar year at a site determined by the presiding officer.

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 19, 2022.

TRD-202203124

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: September 8, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 406-5478



SUBCHAPTER B. RULEMAKING

37 TAC §141.57

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter B, §141.57 concerning Petition for Adoption of Rule. The rule is adopted without changes to the proposed text as published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3236). The rule will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoptions of these amendments.

The amended rule is adopted under §2001.021, Government Code. Section 2001.021 requires a state agency to provide for public participation in the rulemaking process.

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 19, 2022.

TRD-202203125

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: September 8, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 406-5478



SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.61, §141.72

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter C, §141.61 and §141.72, concerning submission and presentation of information and representation of offenders. The rules are adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3237). The rules will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoptions of these amendments.

The amended rules are adopted under §508.082 and §508.083, Government Code. Section 508.082 requires the Board to adopt rules relating to the submission and presentation of information and arguments to the Board, a parole panel, and the department for and in behalf of an inmate. Section 508.083 relates to the representation of an inmate in a matter before the Board or a parole panel.

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 19, 2022.

TRD-202203127

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: September 8, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 406-5478



SUBCHAPTER D. REGISTRATION OF VISITORS AND FEES

37 TAC §141.81, §141.82

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 141, Subchapter D, §141.81 and §141.82 concerning registration of visitors and fee affidavits. The rules are adopted without changes to the proposed text as published in the June 3, 2022 issue of the *Texas Register* (47 TexReg 3238). The rules will not be republished.

The amendments are adopted to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoptions of these amendments.

The amended rules are adopted under §508.036, §508.0441, §508.045, §508.084, §508.313, and §2004.002, Government Code. Section 508.036 authorizes the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.084 requires a person who represents an inmate to file a fee affidavit with the Texas Department of Criminal Justice. Section 508.313 pertains to confidential and privileged information. Section 2004.002 requires an individual, who appears before or contacts a state agency in person or

on behalf of another, to register with the state agency and requires the Board to provide for and maintain a record of such registrations.

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 19, 2022.

TRD-202203129

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: September 8, 2022

Proposal publication date: June 3, 2022

For further information, please call: (512) 406-5478



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter D, Miscellaneous Provisions. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Laura Ingram, Deputy General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at laura.ingram@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202203146

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: August 22, 2022



The Texas Department of Agriculture (the Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter E, Advisory Committees. This review will be conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Skyler Shafer, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202203177

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: August 22, 2022



The Texas Department of Agriculture (the Department) files this notice of intent to review the rules in Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter R, Children's Access to Nutritious Food Grant Program, comprised of §1.1200 (Statement of Purpose), §1.1201 (Definitions), §1.1202 (Eligibility), §1.1203 (Contents of Proposal), and §1.1204 (Reporting Requirements).

This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Karen Reichek, Administrator for Trade & Business Development, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email at Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202203214

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: August 24, 2022



The Texas Department of Agriculture (Department) files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 26, Subchapter B, Nutrition Working Groups. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Susana Esparza, Assistant General Counsel, at Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711-2847 or by email to susana.esparza@texasagriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202203215

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Filed: August 24, 2022



State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning September 2022, will review and consider for re-adoption, revision, or repeal Chapter 101, General Administration; Chapter 103, Rulemaking Procedure; and Chapter 104, Procedure for Review of Applications, in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency has conducted a preliminary review of these chapters and determined the reasons for initially adopting the chapters continue to exist. The Agency's Board will consider, among other things, whether the initial factual, legal, and policy reasons for adoption of these rules continue to exist, whether these rules should be repealed, and whether any changes are needed. This notice to review has no effect on the chapters as they currently exist. Readopted chapters will be noted in a subsequent issue of the *Texas Register's* "Review of Agency Rules" section without publication of the text.

Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the *Texas Register*. Such changes will be open for public comment prior to the final adoption of any changes to the rule by the Agency in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

Issued in Austin, Texas on August 23, 2022.

TRD-202203207

Travis J. Iles

Securities Commissioner

State Securities Board

Filed: August 23, 2022



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

Rule Chapters Under Review

Chapter 55, Rules for Administrative Services

Chapter 61, Combative Sports

Chapter 65, Boilers

Chapter 66, Registration of Property Tax Consultants

Chapter 67, Auctioneers

Chapter 68, Elimination of Architectural Barriers

Chapter 74, Elevators, Escalators, and Related Equipment

Chapter 75, Air Conditioning and Refrigeration

Chapter 77, Service Contract Providers and Administrators

Chapter 79, Weather Modification

Chapter 87, Used Automotive Parts Recyclers

Chapter 94, Property Tax Professionals

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules> (select the appropriate chapter name for your comment); by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation, the Department's governing body, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202203223

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: August 24, 2022



Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) adopts the review of Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter K, Employee Training Rules, comprised of §§1.700 - 1.702. The review was conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

Notice of intent to review the rules was published in the May 21, 2021 issue of the *Texas Register* (46 TexReg 3303). No comments were received on the proposed rule review.

The Department finds that the reasons for initially adopting the rules in Chapter 1, Subchapter K continue to exist, and readopts the rules with amendments and proposes new rules to reflect current statutory requirements, current procedures, provide clarity, and update references to legal authority. As a result, the department proposes amendments to §§1.700 - 1.702 and proposes new §§1.703 and 1.704, which can be found in the Proposed Rules section of this issue.

TRD-202203140

Skyler Shafer
Assistant Attorney General
Texas Department of Agriculture
Filed: August 19, 2022



Pursuant to the notices of proposed rule review published in the March 25, 2022 issue of the *Texas Register* (47 TexReg 1627), the Texas Department of Agriculture (Department) has reviewed and considered for readoption, revision or repeal all sections within Texas Administrative Code, Title 4, Part 1, Chapter 17, Subchapter F (Texas Wine Marketing Assistance Program), and Subchapter H (Texas Shrimp Marketing Assistance Program), in accordance with Texas Government Code, §2001.039 (Agency Review of Existing Rules). No comments were received on the proposed rule reviews.

The Department finds that the reasons for initially adopting Chapter 17, Subchapters F and H no longer exist. As a result, the Department proposes the repeal of both subchapters, which can be found in the Proposed Rules section of this issue.

TRD-202203157
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: August 22, 2022



State Seed and Plant Board

Title 4, Part 5

Pursuant to the notice of proposed rule review published in the July 16, 2021 issue of the *Texas Register* (46 TexReg 4379), the State Seed and Plant Board (Board) has reviewed and considered for readoption, revision, or repeal all rules in Texas Administrative Code, Title 4, Part 5, Chapter 81, Certification Procedures, and Chapter 82, Administrative Procedures, in accordance with Texas Government Code, §2001.039 (Agency Review of Existing Rules). No comments were received on the proposed rule review.

The Board has found that the business reasons for initially adopting the rules in Chapters 81 and 82 no longer exist. As a result, the Board proposes the repeals of Chapters 81 and 82, which can be found in the Proposed Rules section of this issue.

TRD-202203120
Skyler Shafer
Assistant General Counsel
State Seed and Plant Board
Filed: August 18, 2022



Department of Savings and Mortgage Lending

Title 7, Part 4

The Department of Savings and Mortgage Lending (department) has completed its review of the following chapters of 7 TAC Part 4:

Chapter 75, Applications (§§75.1 - 75.3, 75.6, 75.8, 75.10, 75.25 - 75.27, 75.31 - 75.33, 75.35, 75.36, 75.38, 75.39, 75.41, 75.81 - 75.83, 75.87 - 75.91, 75.122 - 75.124, 75.126, 75.127, 75.201 - 75.204);

Chapter 76, Miscellaneous (§§76.1, 76.2, 76.4 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.91 - 76.103, 76.105 - 76.110); and

Chapter 77, Loans, Investments, Savings, and Deposits (§§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91, 77.92, 77.93, 77.94, 77.95, 77.96).

The review of 7 TAC Chapters 75 - 77 was conducted in accordance with Government Code §2001.039. Notice of the review was published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2777). No comments were received in response to the notice.

The rules contained in 7 TAC Chapters 75 - 77 were adopted by the Finance Commission of Texas (commission) on behalf of the department.

As a result of the rule review conducted by the department, the commission has determined that certain changes to the rules are appropriate and necessary. Those proposed rule changes are published in the Proposed Rules section in this issue of the *Texas Register*.

The commission, after considering the results of the rule review conducted by the department, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapters 75 - 77.

TRD-202203187
Iain A. Berry
Deputy General Counsel
Department of Savings and Mortgage Lending
Filed: August 22, 2022



Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Chapter 86, concerning Retail Creditors, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Before publishing notice of the review in the *Texas Register*, the Office of Consumer Credit Commissioner (OCCC) issued an informal advance notice of the rule review to stakeholders. The OCCC received one informal precomment from an industry association in response to the advance notice. The precomment recommended an amendment to 7 TAC §86.201 (relating to Documentary Fee), to increase the maximum documentary fee for covered land vehicles from \$125 to \$150. Regarding this precomment, the commission does not believe that an increase in the maximum documentary fee is supported at this time. The OCCC intends to study this issue further.

Notice of the review of 7 TAC Chapter 86 was published in the June 3, 2022, issue of the *Texas Register* (47 TexReg 3277). The commission did not receive any official comments in response to that notice.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 86 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202203132
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: August 19, 2022



Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 62, Commissioner's Rules Concerning Options for Local Revenue Levels in Excess of Entitlement, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 62 in the April 22, 2022, issue of the *Texas Register* (47 TexReg 2301).

Relating to the review of Chapter 62, TEA finds that the reasons for adopting the chapter continue to exist and readopts the rules. TEA received no comments related to the review of Chapter 62. No changes to Chapter 62 are necessary as a result of the review.

This concludes the review of Chapter 62.

TRD-202203079

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 17, 2022



Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 149, Commissioner's Rules Concerning Educator Standards, Subchapter AA, Teacher Standards, and Subchapter BB, Administrator Standards, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 149, Subchapters AA and BB, in the July 1, 2022, issue of the *Texas Register* (47 TexReg 3827).

Relating to the review of Chapter 149, Subchapters AA and BB, TEA finds that the reasons for adopting the chapter continue to exist and readopts the rules. TEA received no comments related to the review of the chapter. No changes to Chapter 149, Subchapters AA and BB, are necessary as a result of the review.

This concludes the review of Chapter 149.

TRD-202203080

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 17, 2022



Texas Appraiser Licensing and Certification Board

Title 22, Part 8

In accordance with Texas Government Code §2001.039, the Texas Appraiser Licensing and Certification Board (TALCB) has concluded its review of 22 TAC Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act. The notice of proposed rule review was published in the March 11, 2022 issue of the *Texas Register* (47 TexReg 1303).

TALCB has determined that the reasoned justification for adopting 22 TAC 153 continues to exist. Furthermore, the review process may indicate that a specific rule needs to be amended to further refine or better reflect current TALCB procedures and policy considerations, or that rules be combined or reduced for simplification and clarity. Accordingly, TALCB adopts with amendments 22 TAC 153 as proposed in the May 20, 2022 issue of the *Texas Register* (47 TexReg 2991) and adopted under the Adopted Rules section of this issue of the *Texas Register*.

No comments were received regarding TALCB's notice of review. This notice concludes TALCB's review of 22 TAC Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act.

TRD-202203142

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Filed: August 19, 2022



Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (Board) files this notice of readoption of 37 TAC, Part 5, Chapter 141, General Provisions. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the July 24, 2020 issue of the *Texas Register* (45 TexReg 5205).

As a result of the rule review, the Board has determined that the original justifications for initially adopting the rules in 37 TAC Chapter 141 continue to exist. The Board readopts §§141.3, 141.5, 141.57, 141.61, 141.72, 141.81, and 141.82 with amendments as published in the Adopted Rules section of this issue of the *Texas Register*.

No comments on the proposed rule review were received.

This concludes the review of 37 TAC Chapter 141, General Provisions.

TRD-202203133

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: August 19, 2022



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §75.251(d)

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$5,548	0.000000000	\$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion



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 Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/29/22 - 09/04/22 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/29/22 - 09/04/22 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/22 - 09/30/22 is 5.50% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/22 - 09/30/22 is 5.50% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-202203206

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 23, 2022

Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

Amplify Credit Union (Austin) - See *Texas Register* dated on March 25, 2022

TRD-202203218

Robert W. Etheridge

Interim Commissioner

Credit Union Department

Filed: August 24, 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 **October 4, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 4, 2022**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Development, Incorporated; DOCKET NUMBER: 2022-0420-PWS-E; IDENTIFIER: RN102678505; LOCATION: Medina, Medina County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly, as identified in 30 TAC §290.47(f); PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Ecko Beggs, (915) 834-4968; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: BLACK, GIBSON AND WATERS, INCORPORATED; DOCKET NUMBER: 2022-0583-PST-E; IDENTIFIER: RN109144022; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$4,687; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CAL'S CONVENIENCE, INCORPORATED dba Stripes 270 - 80002126; DOCKET NUMBER: 2022-0618-PST-E; IDENTIFIER: RN102023975; LOCATION: Ozona, Crockett 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

in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239-2142; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: City of Blanco; DOCKET NUMBER: 2022-0592-IHW-E; IDENTIFIER: RN101721504; LOCATION: Blanco, Blanco County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §325.3(a)(3), 40 Code of Federal Regulations §370.33(a), and Texas Health and Safety Code, §506.006(d), by failing to submit an initial form within 90 days of beginning operations and acquiring reportable chemicals or substances; PENALTY: \$4,096; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: City of Coahoma; DOCKET NUMBER: 2021-1297-PWS-E; IDENTIFIER: RN107705188; LOCATION: Coahoma, Howard 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: \$5,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,500; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: City of Covington; DOCKET NUMBER: 2022-0544-PWS-E; IDENTIFIER: RN101229698; LOCATION: Covington, 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 prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$475; 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 Junction; DOCKET NUMBER: 2022-0566-IHW-E; IDENTIFIER: RN101383990; LOCATION: Junction, Kimble County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §325.3(a)(2), 40 Code of Federal Regulations (CFR) §370.45(a), and Texas Health and Safety Code (THSC), §506.006(c), by failing to submit an annual report; and 30 TAC §325.3(a)(3), 40 CFR §370.33(a), and THSC, §506.006(d), by failing to submit an initial form within 90 days of beginning operations and acquiring reportable chemicals or substances; PENALTY: \$1,649; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(8) COMPANY: COUTO HOMES INCORPORATED; DOCKET NUMBER: 2021-1320-WQ-E; IDENTIFIER: RN111337150; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$11,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2022-0562-AIR-E; IDENTIFIER: RN100222330; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing

plant; RULES VIOLATED: 30 TAC §§101.221(a), 116.115(b)(2)(G), and 122.143(4), New Source Review Permit Numbers 676A and PS-DTX1246, General Conditions Number 9, Federal Operating Permit Number O2585, General Terms and Conditions and Special Terms and Conditions Number 2.H, by failing to maintain all pollution emission capture equipment and abatement equipment in good working order and operated properly during facility operations; PENALTY: \$31,200; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: JOBE MATERIALS, L.P.; DOCKET NUMBER: 2022-0062-PWS-E; IDENTIFIER: RN105500946; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher groundwater license; PENALTY: \$3,367; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(11) COMPANY: LAKEVIEW HILLS PROPERTY OWNERS ASSOCIATION; DOCKET NUMBER: 2022-0704-PWS-E; IDENTIFIER: RN101253698; LOCATION: Coldspring, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 61 for Drinking Water System Components; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies (BPAs) tested upon installation and on an annual basis by a recognized BPA and certified that they are operating within specifications; 30 TAC §290.46(f)(3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(j)(1)(A) and (B), by failing to have all customer service inspections conducted by an individual that is a Plumber Inspector or Water Supply Protection Specialist licensed by the State Board of Plumbing Examiners or by a customer service inspector who has completed a Commission-approved course, passed an examination administered by the ED, and holds a current professional license as a customer service inspector; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(q)(1) and (6)(E), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low disinfectant residual using the prescribed format in 30 TAC §290.47(c)(1), and failing to meet the required actions prior to rescinding the boil water; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$1,737; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Lazy River RV and Trailer Park, LLC; DOCKET NUMBER: 2022-0722-PWS-E; IDENTIFIER: RN111039566; LOCATION: Columbus, Colorado County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: \$67; ENFORCE-

MENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Moriah TFS Operations, LLC; DOCKET NUMBER: 2022-0524-AIR-E; IDENTIFIER: RN111353686; LOCATION: Garden City, Glasscock County; TYPE OF FACILITY: rock crusher; 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: \$2,250; ENFORCEMENT COORDINATOR: Kate Dacy, (512) 239-4593; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(14) COMPANY: MOUNTAIN BREEZE, L.L.C.; DOCKET NUMBER: 2022-0480-PWS-E; IDENTIFIER: RN101202505; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect and report the results of nitrate sampling to the executive director (ED) for the January 1, 2020 - December 31, 2020, and January 1, 2021 - December 31, 2021, monitoring periods; and 30 TAC §290.118(c) and (e), by failing to collect and report the results of secondary constituents sampling to the ED for the January 1, 2019 - December 31, 2021, monitoring period; PENALTY: \$2,747; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: PRUDE RANCH, INCORPORATED; DOCKET NUMBER: 2021-1564-PWS-E; IDENTIFIER: RN101454775; LOCATION: Fort Davis, Jeff Davis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for Well Number 2 that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.43(c)(3), by failing to provide an overflow discharge opening on the 10,000 gallon ground storage tank with a gravity-hinged and weighted cover that closes automatically and fits tightly with no gap over 1/16 inch, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's two flow meters at least once every three years; PENALTY: \$1,081; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(16) COMPANY: Southwest Texas Commercial Properties LLC dba Star Stop 430531; DOCKET NUMBER: 2022-0386-PST-E; IDENTIFIER: RN102408994; LOCATION: Mertzon, Irion 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; and 30 TAC §334.51(b)(2)(C)(ii) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to automatically restrict the flow of regulated substances into each tank when the liquid level in each tank reaches a preset level that is no higher than the 90% capacity level for the tank; PENALTY:

\$4,425; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(17) COMPANY: The Bulldawg Stop, a Texas limited liability company; DOCKET NUMBER: 2022-0565-PST-E; IDENTIFIER: RN106300742; LOCATION: Carthage, Panola 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: \$6,119; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Triangle Brick Company; DOCKET NUMBER: 2022-0622-PWS-E; IDENTIFIER: RN107199929; LOCATION: Henrietta, Clay 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: \$1,625; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2022-0582-PWS-E; IDENTIFIER: RN101241255; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; and 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent levels for color of 15 color units; PENALTY: \$1,611; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: YES Estates TX, LLC; DOCKET NUMBER: 2021-1329-MWD-E; IDENTIFIER: RN102916574; LOCATION: Culleoka, Collin 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 WQ0015198001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0015198001, Interim Effluent Limitations and Monitoring Requirements Numbers 3 and 6, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$18,105; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202203141

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 19, 2022

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Enforcement Orders

An agreed order was adopted regarding On Target Ranges #1, LLC, Docket No. 2019-1379-MSW-E on August 24, 2022 assessing \$11,812 in administrative penalties with \$10,612 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegebe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Ann Ridlehuber, Docket No. 2020-0875-IHW-E on August 24, 2022 assessing \$26,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Danbury, Docket No. 2021-0640-MWD-E on August 24, 2022 assessing \$19,448 in administrative penalties with \$3,889 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I L.P., Docket No. 2021-0885-MWD-E on August 24, 2022 assessing \$10,875 in administrative penalties with \$2,175 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nueces County Water Control and Improvement District No. 4, Docket No. 2021-0899-MWD-E on August 24, 2022 assessing \$14,250 in administrative penalties with \$2,850 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXMORE, INC., Docket No. 2021-0910-AIR-E on August 24, 2022 assessing \$11,875 in administrative penalties with \$2,375 deferred. Information concerning any aspect of this order may be obtained by contacting Kate Dacy, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Streetman, Docket No. 2021-0969-PWS-E on August 24, 2022 assessing \$4,255 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting America Ruiz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K-Solv Chemicals, LLC, Docket No. 2021-1006-AIR-E on August 24, 2022 assessing \$11,413 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Patty M. Steed dba Canyon Dam Mobile Home Park, Docket No. 2021-1012-PWS-E on August 24, 2022 assessing \$12,484 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting America Ruiz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TABORCA PROPERTIES, LLC, Docket No. 2021-1151-PWS-E on August 24, 2022 assessing

\$11,250 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOMA ALTA WATER SUPPLY CORPORATION, Docket No. 2021-1152-PWS-E on August 24, 2022 assessing \$3,810 in administrative penalties with \$3,175 deferred. Information concerning any aspect of this order may be obtained by contacting Ecko Beggs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS STOP SHOP, L.L.C. dba Breaktime, Docket No. 2021-1178-PST-E on August 24, 2022 assessing \$9,847 in administrative penalties with \$1,969 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AVALON FOOD MART, INC., Docket No. 2021-1299-PST-E on August 24, 2022 assessing \$10,244 in administrative penalties with \$2,048 deferred. Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202203221

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2022



Notice of District Petition

Notice issued August 22, 2022

TCEQ Internal Control No. D-07202022-035; Diecieseis, LLC, a Texas limited liability company and Continental Homes of Texas, LP, a Texas limited partnership (Petitioners) filed a petition for creation of East Hays County Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Continental Homes of Texas, LP, a Texas limited partnership, on the property to be included in the proposed District and application material indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 589.791 acres located within Hays County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Kyle, Texas. By Resolution No. 1276, passed and adopted on February 1, 2022, the City of Kyle, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful

excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$70,430,000 (\$64,530,000 for water, wastewater, and drainage plus \$5,900,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202203196

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 23, 2022



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests

a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 4, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 4, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Nigton-Wakefield Water Supply Corporation; DOCKET NUMBER: 2020-0019-PWS-E; TCEQ ID NUMBER: RN101219277; LOCATION: Farm-to-Market Road 2262 approximately one mile southeast of State Highway 94 near Nigton, Trinity County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.115(f)(1), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes based on the locational running annual average; and THSC, §341.0315(c) and 30 TAC §290.115(f)(1), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids based on the locational running annual average; PENALTY: \$2,430; STAFF ATTORNEY: Megan Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202203189

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 22, 2022



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 4, 2022**. TWC, §7.075, also requires that the commission promptly

consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 4, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Nianshra Holdings, LLC dba Carry On Food Mart; DOCKET NUMBER: 2020-1579-PST-E; TCEQ ID NUMBER: RN102356557; LOCATION: 4447 De Zavala Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST in a manner which would detect a release frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for review; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$10,475; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Prentice Smith and Judy Smith; DOCKET NUMBER: 2022-0414-MSW-E; TCEQ ID NUMBER: RN106373301; LOCATION: 57 Private Road 534 near Melvin, McCulloch County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing or permitting the unauthorized disposal of MSW; PENALTY: \$6,750; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202203188

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: August 22, 2022



Notice of Water Rights Application

Notices Issued August 23, 2022

APPLICATION NO. 14-1280A; Christoval Independent School District (Owner/Applicant), P.O. Box 162, Christoval, Texas 76935, seeks to amend its portion of Certificate of Adjudication No. 14-1280 to add a diversion reach on the South Concho River and change the place of

use in Tom Green County. More information on the application and how to participate in the permitting process is given below.

The application and fees were received on April 1, 2021. Additional information and fees were received on June 7 and 11, 2021, and July 8, 13 and 26, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 19, 2021.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft amendment, if granted, would include special conditions including, but not limited to, installing a measurement device and maintaining records. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 12, 2022. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by September 12, 2022. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by September 12, 2022.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the TCEQ will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 1280 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 12-5168C; Gulf Coast Water Authority, 3630 FM 1765, Texas City, Texas 77591, Applicant, seeks to amend Certificate of Adjudication No. 12-5168 to add mining purposes of use, to authorize the use of three diversion reaches, to expressly incorporate the existing bed and banks authorization for Jones and Oyster Creeks into the Certificate, to add purposes of use to an existing ex-

empt interbasin transfer from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin, to remove acreage limitations for agricultural use, and to delete special conditions from the Certificate. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on October 26, 2018. Additional information and fees were received on January 28, 2019, February 23, 2021, and March 19, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 1, 2019. The Executive Director completed the technical review of the application and prepared a draft amendment. The amendment, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintaining an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC- 105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 5168 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 12-5171B; Gulf Coast Water Authority, 3630 FM 1765, Texas City, Texas 77591, Applicant, seeks to amend Certificate of Adjudication No. 12-5171 to add a place of use, to add agricultural purposes of use and remove acreage restrictions, to authorize the use of three diversion reaches, to expressly authorize use of the bed and banks of Jones and Oyster Creeks to convey water diverted under the Certificate, to add purposes of use to an existing exempt interbasin transfer

from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin, to delete a special condition from the Certificate, and to further amend the Certificate to expressly authorize diversion of junior priority water before senior priority water. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on October 26, 2018. Additional information and fees were received on January 28, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 1, 2019.

The Executive Director completed the technical review of the application and prepared a draft amendment. The amendment, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintaining an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC- 105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 5171 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 12-5322G; Gulf Coast Water Authority, 3630 FM 1765, Texas City, Texas 77591, Applicant, seeks to amend Certificate of Adjudication No. 12-5322 to add mining purposes of use to all the authorized water, to authorize the use of three diversion reaches, to authorize use of the bed and banks of Jones and Oyster

Creeks to convey water diverted under the Certificate, and to add a purpose of use to an existing exempt interbasin transfer from the Brazos River Basin to the San Jacinto River Basin and the San Jacinto-Brazos Coastal Basin, and to further amend the Certificate to expressly authorize diversion of junior priority water before senior priority water. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on October 26, 2018. Additional information and fees were received on January 28, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 1, 2019. The Executive Director completed the technical review of the application and prepared a draft amendment. The amendment, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintaining an accounting plan. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC- 105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 5322 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202203216

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2022

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 8, 2022 to August 19, 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, August 26, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, September 25, 2022.

FEDERAL AGENCY ACTIONS:

Applicant: CenterPoint Energy Houston Electric

Location: The project site is located in wetlands near Oyster Creek, at 4346 Farm-to-Market (FM) 523, in Freeport, Brazoria County, Texas.

Latitude & Longitude (NAD 83): 29.0403, -95.3403

Project Description: The applicant proposes to permanently discharge fill into 6.81 acres of palustrine forested (PFO) wetlands and 9.19 acre of palustrine emergent (PEM) wetlands, permanently convert 1.93 acres of PFO wetlands to PEM or palustrine scrub shrub wetlands, and temporarily discharge fill into 3.94 acres of PEM wetlands to construct new 138 kilovolt (kV) and 345 kV substations. Construction of the substations will also include attendant infrastructure consisting of two stormwater detention ponds and outfalls, and high voltage transmission interconnect lines supported by bi-level concrete poles, double circuit steel poles, and lattice towers. The bi-level concrete poles, double circuit steel poles, and lattice towers will have bases constructed of poured concrete, and these discharge impacts have been incorporated into the totals above.

The applicant stated that the purpose of the project is to construct a new substation facility along existing transmission lines that will provide radial 138 kV service to DOW to improve reliability, support future expansion at DOW Stratton Ridge facility, and support 237.5 megawatts (MW) of new load from projects currently under development, which CenterPoint Energy Houston Electric is required to serve. The proposed project is not water dependent.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00432. 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: 22-1387-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-202203224

Mark A. Havens

Deputy Land Commissioner Chief Clerk

General Land Office

Filed: August 24, 2022

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Incline National Insurance Company, a foreign fire and/or casualty company. The home office is in Los Angeles, California.

Application for incorporation in the state of Texas for ABC Insurance Company, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application for Clear Spring Life Insurance Company, a foreign life, accident and/or health company, to change its name to Gainbridge Life Insurance Company. The home office is in Wilmington, Delaware.

Application for 21st Century Indemnity Insurance Company, a foreign fire and/or casualty company, to change its name to Greenwood Insurance Company. The home office is in Harrisburg, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC FRD-CL, Austin, Texas 78701.

TRD-202203222

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: August 24, 2022

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Texas Lottery Commission

Scratch Ticket Game Number 2422 "7"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2422 is "7". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2422 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2422.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 2X SYMBOL, 7 SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$300, \$10,000 and \$250,000.

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. 2422 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
2X SYMBOL	DBL
7 SYMBOL	WINALL
\$10.00	TEN\$
\$20.00	TWY\$

\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$300	THHN
\$10,000	10TH
\$250,000	250TH

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 (2422), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2422-0000001-001.

H. Pack - A Pack of the "7" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 "7" Scratch Ticket Game No. 2422.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "7" Play Symbol, the player WINS ALL 30 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-six (66) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-six (66) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-six (66) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$10,000 and \$250,000 will each appear at least once, except on Tickets winning thirty (30) times or with the "7" (WINALL) Play Symbol and with respect to other parameters, play action or prize structure.

E. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

F. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbols (i.e., 10 and \$10, 20 and \$20, 30 and \$30 and 50 and \$50).

K. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

L. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

N. The "2X" (DBL) Play Symbol will never appear more than once on a Ticket.

O. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

P. The "7" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "7" (WINALL) Play Symbol will instantly win all thirty (30) prize amounts and will win only as per the prize structure.

R. The "7" (WINALL) Play Symbol will never appear more than once on a Ticket.

S. The "7" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

T. On Tickets winning with the "7" (WINALL) Play Symbol, the YOUR NUMBERS Play Symbols will not match any of the WINNING NUMBERS Play Symbols.

U. The "2X" (DBL) and "7" (WINALL) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "7" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$300 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 "7" Scratch Ticket Game prize of \$600, \$1,500, \$3,000, \$10,000 or \$250,000, 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 "7" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "7" 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 "7" 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "7" Scratch Ticket may be entered into one (1) of four (4) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2422. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2422 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	1,045,200	7.69
\$20.00	482,400	16.67
\$30.00	321,600	25.00
\$50.00	321,600	25.00
\$100	13,735	585.37
\$300	18,827	427.05
\$600	938	8,571.43
\$1,500	100	80,400.00
\$3,000	150	53,600.00
\$10,000	10	804,000.00
\$250,000	5	1,608,000.00

*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 3.65. 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. 2422 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. 2422, 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-202203201
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: August 23, 2022



Scratch Ticket Game Number 2449 "HOLIDAY BUCKS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2449 is "HOLIDAY BUCKS". The play style is "match 3 of x".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2449 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2449.

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: GIFT

SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 and \$500.

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. 2449 - 1.2D

PLAY SYMBOL	CAPTION
GIFT SYMBOL	DBL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

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 (2449), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2449-0000001-001.

H. Pack - A Pack of the "HOLIDAY BUCKS" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 "HOLIDAY BUCKS" Scratch Ticket Game No. 2449.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HOLIDAY BUCKS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose nine (9) Play Symbols. A player scratches the entire play area to reveal 9 prize amounts. If the player reveals 3 matching prize amounts, the player wins that amount. If the player reveals 2 matching prize amounts and a "GIFT" Play Symbol, the player wins DOUBLE that amount. 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 nine (9) 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 nine (9) 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 nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the nine (9) 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 de-

fective 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can only win one (1) time.

D. A Prize Symbol will not appear more than three (3) times on a Ticket.

E. A Ticket will not contain two (2) or more sets of three (3) matching Prize Symbols.

F. Winning Tickets will contain three (3) matching Prize Symbols or two (2) matching Prize Symbols and a "GIFT" (DBL) Play Symbol.

G. On winning Tickets, all non-winning Prize Symbols will be different from the winning Prize Symbols.

H. Non-Winning Tickets will never have more than two (2) matching Prize Symbols.

I. The "GIFT" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

J. The "GIFT" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

K. The "GIFT" (DBL) Play Symbol will never appear on a Ticket that wins with three (3) matching Prize Symbols.

L. The "GIFT" (DBL) Play Symbol will never appear on a Ticket that has more than one (1) pair of matching Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY BUCKS" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 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 \$40.00, \$50.00, \$100 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. As an alternative method of claiming a "HOLIDAY BUCKS" 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.

C. 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.

D. 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 "HOLIDAY BUCKS" 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 "HOLIDAY BUCKS" 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 11,160,000 Scratch Tickets in Scratch Ticket Game No. 2449. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2449 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	1,264,800	8.82
\$2.00	669,600	16.67
\$4.00	310,000	36.00
\$5.00	99,200	112.50
\$10.00	86,800	128.57
\$20.00	49,600	225.00
\$40.00	3,410	3,272.73
\$50.00	1,240	9,000.00
\$100	2,790	4,000.00
\$500	57	195,789.47

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.49. 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. 2449 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. 2449, 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-202203220
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: August 24, 2022



Texas Parks and Wildlife Department

Correction of Error

The Texas Parks and Wildlife Department adopted amendments to 31 TAC §57.981 in the July 8, 2022, issue of the *Texas Register* (47 TexReg 3973). The rule was adopted with changes to the proposed text, which was noted and described in the preamble; however, the rule text submitted by the agency text did not reflect the change. The change to §57.981, concerning Bag, Possession, and Length Limits, altered subsection (d)(1)(C)(iii)(III) to eliminate potential ambiguity regarding the measurement of minimum length for largemouth bass on the affected waterbodies. As proposed, the provision prohibited the retention of largemouth bass "of 16 inches or greater in length," which the department determined could be confusing. The change reworded the provision to prohibit the retention of largemouth bass "of greater than 16 inches in length." The department regrets the error.

The corrected provision should read:

(III) It is unlawful to retain largemouth bass of greater than 16 inches in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake

unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

TRD-202203145

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Public Utility Commission of Texas

Notice of Application for Partial Certificate of Convenience and Necessity Rights

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 5, 2022, for partial certificate of convenience and necessity rights according to Public Utility Regulatory Act (PURA) §§ 37.051(c-1) and 37.056(b)(2) to interconnect an HVDC Facility to the Electric Reliability Transmission of Texas (ERCOT) transmission grid.

Docket Style and Number: Application of Grid United Texas LLC for A Certificate of Convenience and Necessity Rights Under PURA §§ 37.051(c-1) and 37.056(b)(2), Docket Number 53758.

The Application: Grid United Texas seeks findings from the Commission related to the proposed Pecos West Intertie Project (proposed project), which is a proposed 1,500 MW high voltage direct current (HVDC) interconnection between ERCOT and the Western Electricity Coordinating Council (WECC).

The proposed project is proposed to connect at the LCRA Transmission Services Corporation (LCRA TSC) Bakersfield Switching Station in Pecos County, Texas, and at an El Paso Electric Company (EPE) Station in El Paso County, Texas. Grid United Texas has evaluated interconnection at EPE's Caliente Station and Newman Station, but the specific station alternatives and routes will be addressed in a subsequent application by Grid United Texas for the Proposed Project. An approximately 250 to 300 mile ±525 kilovolt (kV) overhead HVDC tie line (Tie Line) will connect the HVDC converter stations at each end

of the Proposed Project. The Proposed Project's HVDC technology allows ERCOT to maintain electrical isolation from the WECC system.

In this application, Grid United Texas is requesting a finding by the Commission that the public convenience and necessity require, or will require, the interconnection of facilities from an EPE Station to the LCRA TSC Bakersfield Station by Grid United Texas to allow the import of power into, and the export of power out of, the ERCOT transmission grid. Further, Grid United Texas seeks a finding that the Proposed Project is in the public interest. The PUC's findings will be limited to the interconnection and will not grant rights to Grid United Texas to construct and operate the Proposed Project at this time. Rather, the PUC's order will require Grid United Texas to file a subsequent application, satisfying all requirements of PURA § 37.056 (especially related to routing and environmental impacts), and obtain full CCN rights from the PUC prior to constructing and operating the proposed project. Persons with questions about the Proposed Project may contact Project Director Ben Semmes at (346) 206-1674 or email the project at info@pecoswest.com.

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 53758.

TRD-202203174

Andrea Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 22, 2022

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 47 (2022) is cited as follows: 47 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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